

44. J81/1:09/49
CONSULAR OPERATIONS

2015
COMPLETED
176

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-NINTH CONGRESS
FIRST SESSION
ON
CONSULAR OPERATIONS

MARCH 13, 1986

Serial No. 49

ORIGINAL

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20540

4012
I

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, Jr., *New Jersey, Chairman*

JACK BROOKS, Texas	HAMILTON FISH, Jr., New York
ROBERT W. KASTENMEIER, Wisconsin	CARLOS J. MOORHEAD, California
DON EDWARDS, California	HENRY J. HYDE, Illinois
JOHN CONYERS, Jr., Michigan	THOMAS N. KINDNESS, Ohio
JOHN F. SEIBERLING, Ohio	DAN LUNGREN, California
ROMANO L. MAZZOLI, Kentucky	F. JAMES SENSENBRENNER, Jr., Wisconsin
WILLIAM J. HUGHES, New Jersey	BILL McCOLLUM, Florida
MIKE SYNAR, Oklahoma	E. CLAY SHAW, Jr., Florida
PATRICIA SCHROEDER, Colorado	GEORGE W. GEKAS, Pennsylvania
DAN GLICKMAN, Kansas	MICHAEL DeWINE, Ohio
BARNEY FRANK, Massachusetts	WILLIAM E. DANNEMEYER, California
GEO. W. CROCKETT, Jr., Michigan	HANK BROWN, Colorado
CHARLES E. SCHUMER, New York	PATRICK L. SWINDALL, Georgia
BRUCE A. MORRISON, Connecticut	HOWARD COBLE, North Carolina
EDWARD F. FEIGHAN, Ohio	
LAWRENCE J. SMITH, Florida	
HOWARD L. BERMAN, California	
RICK BOUCHER, Virginia	
HARLEY O. STAGGERS, Jr., West Virginia	
JOHN BRYANT, Texas	

M. ELAINE MIELKE, *General Counsel*

GARNER J. CLINE, *Staff Director*

ALAN F. COFFEY, Jr., *Associate Counsel*

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

ROMANO L. MAZZOLI, *Kentucky, Chairman*

BARNEY FRANK, Massachusetts	DAN LUNGREN, California
GEO. W. CROCKETT, Jr., Michigan	HAMILTON FISH, Jr., New York
HOWARD L. BERMAN, California	F. JAMES SENSENBRENNER, Jr., Wisconsin
CHARLES E. SCHUMER, New York	BILL McCOLLUM, Florida
JOHN BRYANT, Texas	

ARTHUR P. ENDRES, Jr., *Counsel*

PETER REGIS, *Legislative Assistant*

EUGENE PUGLIESE, *Assistant Counsel*

LYNN CONWAY, *Assistant Counsel*

BONNIE MCGUIRE, *Legislative Assistant*

THOMAS M. BOYD, *Associate Counsel*

CONTENTS

WITNESSES

Clark, Joan M., Assistant Secretary of State for Consular Affairs.....	Page 2
Prepared statement	4
Coburn, Harry, Deputy Assistant Secretary for Passport Services.....	2
DiPlacido, Carmen, Director of Citizens Consular Services.....	2
Fragomen, Austin T., chairman, American Council on International Personnel, Inc.....	73
Prepared statement	82
Newlin, Michael, Principal Deputy Assistant Secretary for Consular Affairs	2
Otto, Allen, Associate Director of Visa Office.....	2
Penner, Vernon, Deputy Assistant Secretary of State, Visa Services.....	2
Rude, Andre, Hewlett-Packard Co.....	73
Prepared statement	108
Scully, Cornelius, Director of the Office of Legislation, Consular Affairs.....	2
Tharp, T.A.D., Deputy Assistant Secretary for Overseas Citizen Services.....	2

APPENDIX

Excerpts from Foreign Affairs Manual, June 29, 1983, and correspondence relating to consular operations.....	111
--	-----

(iii)

CONSULAR OPERATIONS

THURSDAY, MARCH 13, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 1:05 p.m., in room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Lungren, and Sensenbrenner.

Staff present: Arthur P. Endres, Jr., counsel; Lynnette R. Conway, assistant counsel; Eugene Pugliese, assistant counsel; Bernadette Maguire, legislative assistant; Peter Regis, legislative assistant.

Mr. MAZZOLI. The subcommittee will come to order.

This afternoon's hearing will examine issues relating to the consular operations of the Department of State, including the admission of aliens for business activities. Consular officers conduct the initial phase of our country's immigration system in 140 foreign countries, are on the front line, responding to U.S. citizens and the Nation's people and also its leaders.

We will receive testimony today from Ambassador Joan Clark, Assistant Secretary for Consular Affairs, on the overall consular functions and operations, both domestically and those conducted in foreign countries. In addition, we will hear from representatives of the business community regarding the adequacy of current procedures for the admission of business and commercial personnel.

I welcome Ambassador Clark. Maybe for the purpose of the reporter, maybe you could identify your colleagues, or they could identify themselves for the purpose of the record.

Mr. DiPLACIDO. Mr. Chairman, I am Carmen DiPlacido. I am director of citizens consular services in the Bureau of Consular Affairs.

Mr. THARP. I am T.A.D. Tharp. I am Deputy Assistant Secretary for Overseas Citizen Services.

Mr. COBURN. I am Harry Coburn, Deputy Assistant Secretary for Passport Services.

Mr. NEWLIN. Michael Newlin, Principal Deputy Assistant Secretary for Consular Affairs.

Mr. PENNER. Vernon Penner, Mr. Chairman, Deputy Assistant Secretary of State for Visa Services.

Mr. SCULLY. Cornelius Scully, Director of the Office of Legislation, Regulations and Advisory Assistance, Consular Affairs.

Mr. OTTO. Allan Otto, Associate Director of Visa Office.

Mr. MAZZOLI. Thank you very much.

Ambassador, welcome. We will certainly hear your statement. As you can imagine, we probably have some questions. Maybe if you see fit, you might be able to summarize part of the statement at least.

TESTIMONY OF JOAN M. CLARK, ASSISTANT SECRETARY OF STATE FOR CONSULAR AFFAIRS, ACCOMPANIED BY ALLAN OTTO, CORNELIUS SCULLY, VERNON PENNER, MICHAEL NEWLIN, HARRY COBURN, T.A.D. THARP, CARMEN DIPLACIDO, AND DONALD PARSONS

Ms. CLARK. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today at this oversight hearing. I welcome this opportunity to discuss the work that the Bureau of Consular Affairs performs to deliver services to the public, both domestically and overseas.

With your permission, I will submit a fairly long statement for the record, both to answer your stated specific concerns and to indicate how the Bureau of Consular Affairs is trying to cope with the unpredictable workload changes brought about by uncertain world circumstances.

Over the past 10 years, the Bureau has made automation a large part of its effort to increase productivity in order to hold its own in the face of every-decreasing resources. Automation has become the cornerstone of our internal control efforts, both domestically and at our overseas posts. Automation will eventually become the vehicle which drives our antifraud efforts.

We have made good progress, but much remains to be done within the Bureau and in cooperation with law enforcement agencies. We must work closely with these agencies to provide an appropriate systems interface if realtime information is to be provided at our ports of entry and at our borders.

I recognize that it is impossible to keep all undesirable elements out of this country, but we can and must close off as many avenues as possible. Unfortunately, these development efforts will be costly and our progress will depend entirely upon how the Department fares under the Gramm-Rudman-Hollings budget cuts.

I have assured that our fiscal year 1986 automation and anti-fraud efforts will not suffer by taking our assessed \$2 million cut in other areas and by tightening up travel and equipment spending. Fiscal year 1987 will be the crucial year. If the Bureau has to take a major reduction in its budget request, it would have a serious impact on our consular operations. It would, as well, alter our automation efforts to deter fraud and interagency efforts to provide a systems interface which will prevent terrorists and drug traffickers from entering the United States.

At all of our consular conferences over the past 2 years I have stressed the need for economy and management improvements. I have tried to impress upon our consular officers that new personnel resources will be extremely scarce. I have asked them to take a hard look at the way we do our daily business and to give me their suggestions on how we might begin to improve operations. I will

continue to pursue these initiatives vigorously so that I am assured the Bureau of Consular Affairs management has done what it can to eliminate unnecessary paperwork and procedures. I want to have the best possible structure in place as we attempt to carry out our responsibilities in this period of budget austerity.

This, Mr. Chairman, concludes my statement. I will be pleased to answer any questions that you and the members of the subcommittee have.

[Statement of Joan Clark follows:]

THE TESTIMONY OF

THE HONORABLE JOAN M. CLARK,
ASSISTANT SECRETARY OF STATE
FOR CONSULAR AFFAIRS,

SUMMARY STATEMENT

Mr. Chairman, Members of the Subcommittee, I am pleased to appear before you today at this oversight hearing. I welcome this opportunity to discuss the work that the Bureau of Consular Affairs performs to deliver services to the public both domestically and overseas.

With your permission I will submit a fairly long statement for the record, both to answer your stated specific concerns and to indicate how the Bureau of Consular Affairs is trying to cope with the unpredictable workload changes brought about by uncertain world circumstances.

Over the past ten years, the Bureau has made automation a large part of its effort to increase productivity in order to hold its own in the face of ever decreasing resources. Automation has become the cornerstone of our internal control efforts, both domestically and at our overseas posts. And, automation will eventually become the vehicle which drives our anti-fraud efforts.

We have made good progress, but much remains to be done within the Bureau and in cooperation with law enforcement agencies. We must work closely with these agencies to provide an appropriate systems interface if real time information is to be provided at our ports of entry and at our borders. I recognize that it is impossible to keep all undesirable elements out of this country, but we can, and must, close off as many avenues as possible. Unfortunately, these development efforts will be costly and our progress will depend entirely upon how the Department fares under the Gramm-Rudman-Hollings budget cuts.

I have assured that our FY 1986 automation and anti-fraud efforts will not suffer by taking our assessed \$2,000,000 cut in other areas and by tightening up travel and equipment spending. FY 1987 will be the crucial year. If CA has to take a major reduction in its budget request, it would have a serious impact on our consular operations. It would, as well, alter our automation efforts to deter fraud and our inter-agency efforts to provide a systems interface which will prevent terrorists and drug traffickers from entering the United States.

At all of our consular conferences over the past two years, I have stressed the need for economy and management improvement. I have tried to impress upon our consular officers that new personnel resources will be extremely

scarce. I have asked them to take a hard look at the way we do our daily business and to give me their suggestions on how we might begin to improve operations. I will continue to pursue these initiatives vigorously so that I am assured the Bureau of Consular Affairs' management has done what it can to eliminate unnecessary paperwork and procedures. I want to have the best possible structure in place as we attempt to carry out our responsibilities in this period of budget austerity.

This Mr. Chairman, concludes my statement. I would be pleased to answer any questions that you and the Members of the Subcommittee may have.

Final Copy

March 11, 1986

BEST COPY AVAILABLE

Thank you for providing me the opportunity to appear before your Committee to discuss the work of the Bureau of Consular Affairs.

Before I begin my discussion, I would like to say a few words about the consistently outstanding performance of our consular officers. It has been said many times that the consular officer is one of the unsung heroes of the Foreign Service. Based on my experience as head of the Bureau of Consular Affairs for the past two and a half years, I whole-heartedly endorse this statement. Indeed, consular officers are a highly professional and dedicated group who further U.S. policies on a daily basis under extremely difficult working conditions.

In order to put some of our consular problems in better perspective, let me briefly outline the domestic and overseas organizational structure. As Assistant Secretary for Consular Affairs, I head the Washington staff, assisted by a Principal Deputy Assistant Secretary and three Deputy Assistant Secretaries, one for Visa Services, one for Passport Services, and one for Overseas Citizens Services. These offices, together with a Policy and Coordination Staff, a Public Affairs Staff, and an Executive Office, constitute the Bureau of Consular Affairs (CA).

The offices in Washington provide a support network for the consular officers at our posts abroad. We provide policy and

procedural guidance on passport and visa issues as well as providing a range of services for American citizens, from determining citizenship cases to emergency services for the American public travelling abroad. The Bureau also provides administrative guidance and support. The individuals for whom we provide direction are scattered throughout more than 140 countries, approximately 6 individual Foreign Service posts, and 14 Passport Agencies in the United States. It is my understanding that the Subcommittee wishes to concentrate primarily on our overseas functions but I think it would be useful to discuss briefly the two major domestic functions.

Passport Services

Passport Services is "big business". In fiscal year 1985, over 5 million passports were issued with 170 million dollars in revenue receipts. At the height of its peak season, the office employs over 1,000 fulltime, seasonal, and temporary people at 14 locations in 13 cities. In addition, Passport Services guides over 3,000 clerks of court and post offices nationwide where individual American citizens can apply for a passport in an easy and convenient manner.

We have no control over demand for our product. Rather, demand is greatly influenced by the travelling public's personal financial condition, national and international economic trends, and developments on the international scene such as the recent rise in international terrorism. After

several years of ten percent plus rises in the demand for U.S. Passport, we believe that the terrorist phenomenon and the decline in the dollar are primarily responsible for our being below last years' rate of demand.

Increases and decreases in demand are the primary issue for passport management. After some difficult years early in this decade, I'm pleased to report that last year's record breaking demand was handled relatively smoothly as we consistently met our goal of issuing all passports within ten working days of receipt of the application. This year we are well within that time limit and feel certain that we can maintain it even should we have a sudden surge in demand.

OVERSEAS CITIZEN SERVICES

Citizens Emergency Center

The Bureau of Consular Affairs has found its traditional role of extending protective services to Americans abroad expanded beyond anything originally envisioned for it. The capacity of nature and of political unrest to intrude tragically on Americans overseas was graphically brought home in 1985. In addition to coping with day to day emergencies, involving deaths, arrests, disappearances, and medical and financial problems, the Citizens Emergency Center was the Department's focal point for organizing and managing 24 hour task forces to deal with an unprecedented series of major

emergencies. Those included the hijacking of TWA flight 847, the Mexico earthquake, the seizure of the Achille Lauro, evacuation of Americans from Uganda, bombings at the Rome and Vienna airports, and kidnappings in Beirut, Bogota, and Chad.

In carrying out its responsibilities in providing emergency services to Americans abroad, the Emergency Center assisted in the transfer of approximately \$3 million in private funds to citizens in distress during the past year. Approximately \$500,000 was extended in repatriation loans and nearly \$60,000 was loaned under the Emergency Medical and Dietary Assistance Program. Assistance was also provided by consular officers abroad and by the Emergency Center to the nearly 2700 Americans who were arrested abroad as well as to the approximately 1400 Americans who are in foreign jails and prisons.

The Emergency Center also assisted families in returning the remains of nearly 1700 Americans who died abroad in 1985. In addition, more than 12,000 inquiries were received from concerned relatives regarding the welfare and whereabouts of loved ones outside the U.S.

Finally, the Center issued approximately 200 travel advisories in 1985. While most of these were mundane and concerned such matters as customs and currency regulations and the limited availability of hotel rooms, approximately 30 warned Americans of the need for caution or for avoidance of specific areas within a country because of political instability or a

pattern of violence which the host government is unable or unwilling to control. Because of increasing anxiety among the traveling public due to the violent and well publicized terrorist incidents in 1985, the interest in travel advisories has markedly increased. Hundreds of written and telephonic inquiries are now being received each week in the Center, and the number is certain to increase as the peak travel season approaches.

Citizens Consular Services

The Office of Citizens Consular Services consists of five regional Divisions and has the primary responsibility for assisting and performing on-going consular services to United States citizens and other interested parties in the areas of: Citizenship adjudication and determinations (both acquisition and loss thereof); citizenship documentation (overseas passports, cards of identity, Reports of Birth, Reports of Death, and Certificates of Witness to Marriage); estates of Americans who die abroad; property and trade complaints of U.S. citizens overseas; return of stolen and confiscated property; child custody and transnational child abduction; judicial assistance to private and public attorneys and foreign and domestic courts; notarial services; third country representation and other protecting power agreements; consular treaties, conventions and international agreements; Federal Benefits programs overseas; draft and voter registration abroad; shipping and seamen services, and consular anti-fraud programs.

Specific Events of Interest are:

- The Hague Convention on Transnational Child Abduction (Civil Aspects) and its implementing legislation were submitted to the President for transmission to the Senate for advice and consent to ratification.
- Federal Benefits totalization negotiations were completed with Spain and Sweden. Discussions were held with Austria and an Agreement entered into force with the United Kingdom.
- The passport-by-mail overseas program was finalized enabling better service to the Americans abroad and saving valuable consular resources.
- Consular Convention negotiations were concluded with the Algerians and discussions at Post have been held with Tunisia, Botswana, Mali, Austria, India and Sri Lanka.
- The Council of Europe multilateral Prisoner Transfer treaty was entered into force with Spain, United Kingdom, France, Canada and Sweden.

Overseas Organization and Staffing

Overseas most large posts' consular sections consist of a Visa Section and an American Services Section. In addition, at

nine posts we have full-time anti-fraud officers and at six we have a special section devoted to Social Security Benefits. At medium sized posts, there are normally only the two sections, visa and American services. At small posts, because the workload is on a much smaller scale, consular officers serve as generalists responsible for the entire range of consular operations.

Assignment of consular officers to positions at all three types of missions is interchangeable. Thus, officers typically would not serve only in visa jobs, but would serve in jobs encompassing all consular functions at various times in their careers. Where one ends up is largely a function of the open assignments process, i.e., jobs that are coming vacant in the area of his interest at the time the officer is due for another assignment. Language designation of a position will often play a role in the assignment process. The officers themselves, however, do make the initial bid on jobs and the Department tries to accommodate these bids to the best of its ability. That accommodation extends to out-of-cone assignments. Over the years, I believe it is safe to say that consular officers fill more out-of-cone assignments than do officers in the other three cones (political, economic and administrative).

Workload

Consular operations encompass three functions: first, visa issuance; second, passport and citizenship; and third, special consular services.

Let me start with visa issuances. In fiscal 1985, approximately 361,000 immigrant and 5.8 million nonimmigrant visas were issued.

Beginning with immigrant visas, I will address the overall workload which takes into account both the issuances and the refusals.

More immigrant visas were issued (361,039) and refused (137,050) in FY 1985 than in any of the past several years. As a result, overall immigrant visa workload was up 5.2% in FY 1985 over FY 1984. This reflects the general trend over the past five years of gradually increasing issuances in both immediate relative and preference categories. Most of the increase has been in the category of immediate relatives of United States citizens (spouses, children and parents), which is not subject to numerical limitation. Petitioners for close relatives are eager to see them able to enter the United States as quickly as possible. We have noted that since 1982, the numerically limited second preference category (which includes spouses and children of alien residents of the United States) has been oversubscribed worldwide (i.e., has had a visa availability cut-off date for applicant processing) because applicant demand has exceeded the limit on visas set by law. The resultant lengthening wait for a visa in the second preference category can be avoided if the alien resident petitioner is naturalized and can then entitle his closest

family members to immediate relative status. As the waiting list in the second preference grows, it is likely that more and more potentially qualified second preference applicants will end up converting their status to that of immediate relatives and seeking visas in that category.

Preference immigration is limited by law to 270,000 annually, and preference visa issuance, while showing some slight increases, has not varied greatly from year to year. No major change in the total of preference visa issuances at Foreign Service posts is likely in the near future, absent amendment of the provisions of law which governs these cases.

Increases and decreases in the total of immigrant visa applicants refused visas have tended to parallel the variations in immigrant visa issuances. It is important to note that the vast majority of these refused applicants ultimately overcome visa refusal through the presentation of further documentation requested by the consular officer and receive a visa.

In comparison, future demand in the form of immigrants registered on consular waiting lists in the numerically limited preference categories has increased substantially in recent years, from just over 1,000,000 in FY 1980 to almost 1,800,000 in FY 1985. The total of pending cases has grown in each preference category and continued growth is likely in coming years as more and more intending immigrants establish their eligibility for registration on the waiting lists. Note that

the figures of registered applicants do not include categories not subject to numerical limitation since there is no limitation to processing these cases.

Turning now to nonimmigrant visas (NIV), the overall workload variation issuance and refusals over the past several years has been appreciably different.

Nonimmigrant visa issuances peaked in FY 1981 at almost 7.2 million. During the two following years economic problems in several areas of the world and the strong dollar contributed to a decline in issuance, which bottomed out in 1983 at about 5.6 million. In 1984 issuances began to increase once again and in 1985 totaled nearly 5.8 million. With the recent decline in the value of the dollar against major world currencies, Foreign Service posts have indicated that the demand for visa services during the early months of FY 1986 has increased significantly. Foreign Service posts project a worldwide total NIV issuance for FY 1986 of about 6.4 million.

While NIV issuances showed some decrease during the early 1980's, refusals continued to increase each year, from about 682,000 in FY 1981 to just over a million in FY 1985. This increase is a sign of the careful scrutiny which visa requests are receiving. A visa refusal normally requires more post time than an issuance, and as a consequence we find that workhours have not always declined in a manner arithmetically commensurate with a decline in issuances.

When the number of approximately 1,100,000 projected refusals is added to the anticipated 6.4 million FY 1986 issuances, overall HIV workload this year will be again approaching the FY 1981 high water mark.

The Department's effort in recent years to authorize the maximum possible nonimmigrant visa validity for qualified applicants has reduced the need for frequent reapplication, thus helping to make worldwide nonimmigrant visa processing as efficient as possible.

Citizenship and Passport

Let me now turn to citizenship and passport. The work involves dealing with citizenship claims, and passport services to American citizens abroad, such as issuing passports and registering births. The function has remained relatively stable over the years in terms of resource requirements.

Special Services

Special consular services includes such diverse types of assistance as helping American citizens in need, trying to find missing citizens, and administering various types of Federal benefits programs for beneficiaries abroad.

Given the strong dollar and low air fares of 1985, there was a substantial increase in travel abroad, particularly by younger Americans. Our passport agencies issued over five million passports last year, and I think most of our posts suspect that all five million immediately got on a plane. One of the most serious problems for our consular officers is the number of citizens requiring assistance or services, particularly those being held in foreign jails on drug-related charges. In 1985, 2,700 Americans were arrested, and over 1,400 of them were detained in foreign prisons. 1,160 alone were arrested on drug charges, an increase of nearly 300 over 1984.

Business Visas

The Committee has indicated an interest in some specific nonimmigrant visas - B, E, H, L, and J visas.

Business Visitors (B)

Visitors for business (B-1), defined in section 101(a)(15)(B) of the INA, are the second largest class of nonimmigrants, exceeded only by tourists (B-2). The definition of a visitor for business is very general, nothing more than an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of

foreign press, radio, film or other foreign information media coming to engage in such vocation) who is visiting the United States temporarily for business.

Over many, many years there have been administrative interpretations of this very general language. The question has been the dividing line between business activities and skilled or unskilled labor. A moment's reflection will indicate that there really is no clear line which can be marked out. The Department, through the CA's Office, has worked closely with the Immigration and Naturalization Service to establish interpretations which take into account fairly the two interests which we perceive to be involved in such determinations -- the facilitation of legitimate business activities and the protection of the interests of U.S. workers.

The Board of Immigration Appeals has also been active in this area. Many cases have come before it in which the question was whether an alien could be admitted as a business visitor. One such case, Matter of Hira ((11 I&N 824)(A.G. 1966)) was eventually certified to the Attorney General who approved the Board's conclusion. In essence, the Board concluded that an alien could be admitted as a business visitor (B-1) for employment activities if -- (1) the alien's salary was paid from abroad; (2) the profits from the transactions accrued primarily or exclusively from abroad; (3) each of the alien's trips to the United States was temporary in

character and (4) the activities were a necessary incident to international trade.

Recently, however, there has been a legal challenge to one of our long-standing interpretations -- curiously enough, one which flows directly from Matter of Hira. This is the so-called Bricklayers case -- actually two virtually identical cases, one in the District Court here, the other in the District Court for Northern California. In the local case, Bricklayers I, the District Court dismissed the complaint for mootness, lack of standing and lack of jurisdiction. On appeal, the Court of Appeals reversed and remanded, holding that the case was not moot and that standing and jurisdiction existed. The case is now pending. In the California case, Bricklayers II, the District Court granted summary judgment for the plaintiffs holding that the admission as business visitors of aliens coming to install, service or repair commercial or industrial equipment sold by a foreign vendor to a U.S. purchaser violates the plain language of the INS. The Court enjoined any future such admissions.

The injunction in Bricklayers II had a massive impact on international transactions. It apparently has become virtually standard that contracts for sale of industrial and commercial equipment, especially equipment which is new and involves new technology, include provision for rendering such services by the vendor. Neither we in the Department nor our colleagues at INS had realized the extent and scope of this phenomenon until reaction to the injunction began.

The District Court quickly modified its injunction to exempt pre-existing contracts, which had a temporary palliative effect. More recently, the Ninth Circuit granted a joint motion to modify the injunction pending appeal. Under this modified injunction only aliens coming to perform building or construction work of the kind performed by members of the plaintiff union (The Union of Bricklayers and Allied Craftsmen) are excluded from admission as business visitors.

This recent modification has apparently resolved virtually all of the problems which the original injunction created, since apparently the overwhelming majority of aliens admitted as business visitors for these purposes are skilled in occupations other than those within the jurisdiction of the plaintiff union.

The consequences of having the District Court decision in *Bricklayers II* upheld could be very serious indeed, since that decision would eliminate an interpretation which has become an essential element in the conduct of international transactions involving commercial and industrial equipment, especially that involving new technology. The Government is considering its next steps in this matter and we will keep the Committee informed of developments.

Treaty Traders and Investors (E-1 and E-2)

This classification was included in the immigration law -- originally in the 1924 Act; now in the INA as section 101(a)(15)(E) -- to make provision for the admission of aliens seeking to exercise rights under treaties of commerce and navigation (referred to as FCN treaties). The U.S. had entered into a number of such treaties during the 19th century in which nationals of the one party were granted the right to carry on trade and/or make and manage investments in the territory of the other. Many of these treaties pre-date the existence of any general control over the entry of aliens into the U.S. and it was apparently recognized after World War I that any such general legislation should include provision to give effect to those treaty provisions. Nationals of 39 countries now enjoy treaty trader status and nationals of 29 enjoy treaty investor status as well. The most recent FCN treaty dates from 1966.

Treaty trader status is available to nationals of a treaty country who will be carrying on substantial trade principally between the United States and the treaty country. If the individual concerned is an employee of an organization rather than an individual entrepreneur his position must be at an executive or managerial level or involve essential skills. The organization must also have treaty nationality which for this purpose is determined by the nationality of the owners of the majority of the stock of the organization.

Treaty investor status is available to nationals of a treaty country who are making a substantial investment in the United States. Employees of an organization making such an investment can qualify if they occupy a managerial or executive position or have essential skills. Again, the organization by which the applicant is employed must have treaty nationality as determined on the same basis as for treaty trader cases.

We do not perceive that there are major problems involved in the administration of these provisions. There is a continuing challenge in doing so which results from changes in business practices and procedures. Such changes occur constantly, at some times more rapidly than at others. Interpretations which comported with business practices fifteen or twenty years ago do not always comport with business practices today and we make every effort to maintain sufficient flexibility to accommodate changes. So far, we have not run into any unresolvable issues, although we may from time to time run into unresolvable cases. Frequently, however, a case in which treaty trader or investor classification cannot be accorded will fall into one of the other business classification -- H-1, H-2, L-1 -- and be resolved in that manner.

Temporary workers and trainees (H-1, H-2, H-3) and
Intra-Company transferees (L-1)

I will deal with these two classifications together since both can be accorded to an alien only through the filing and approval of a nonimmigrant visa petition. All such petitions must be adjudicated by our colleagues at INS and, thus, the substantive issues relating to these classifications fall primarily under INS jurisdiction, not ours.

There are two aspects of H and L cases which are of direct concern to us. First, there will from time to time arise questions whether the documentation supporting such a petition is genuine. The issue is not unique to these classifications; it arises in various guises throughout both the immigrant and nonimmigrant visa application process. Nor is it more frequent in H and L cases than in others. We see it therefore as being more a part of the general fraud problem than as a problem peculiar to these classifications requiring action directed at these classifications.

The other issue is also one which is generalized, although this one is confined to nonimmigrants. A temporary worker or trainee must have a residence in a foreign country which he has no intention of abandoning and must be coming temporarily to perform services or receive training. An intra-company transferee need not have a residence in a foreign country which he has no intention of abandoning but must be coming

temporarily. In both cases, therefore, the question of the applicant's intent arises. Just as is the case with some applicants for tourist or student or exchange visitor visas, some applicants for H or L visas are refused because the consular officer is not satisfied that they have the requisite intent.

Also, the Department has coordinated closely with the INS on its blanket L visa petition program. The Service's intent here was to facilitate the processing of intra-company transferee cases by allowing for the approval of a blanket petition in which the corporate affiliates and subsidiaries involved were named and the positions within the organization were identified and described. Once the petition was approved, an employee being transferred to the U.S. from one named organization to another from one of the identified positions to another identified position could apply directly to a consular officer for an L-1 visa presenting evidence of the blanket petition approval. This procedure would eliminate the waiting period for the filing and approval of an individual petition for the specific employee. We have experienced no difficulty in processing individual applicants under this procedure, but it appears that the procedure is relatively rarely used.

Exchange visitors (J-1)

The exchange visitor classification is available to aliens who have been selected to participate in cultural or educational exchange programs designated for this purpose by

USIA. Each program is sponsored by a U.S. organization and each has a general description of its purpose and the activities which will be carried on by participants. Some are government sponsored, but most are not.

Most such programs are academic in character or involve short-term sponsored visits to the U.S. for familiarization purposes. Some business organizations also have become program sponsors and use their programs for training of employees in the United States. We do not have detailed information on the number and exact scope or extent of these programs, but we do know that some have existed for many years -- perhaps as much as twenty years or more. It seems that generally the companies involved have world-wide operations and, thus, have a keen interest in bringing overseas employees to the United States temporarily for various kinds of training.

Appeals

There is no appeal from the decision of a consular officer on an individual visa application, at least not in the formal administrative law sense. A brief review of pertinent provisions of law and regulation should help to clarify this point.

The basic provision of law dealing with the powers and duties of the Secretary of State under the Immigration and Nationality Act is Section 104(a) of the Act. The relevant portion of this section reads:

"The Secretary of State shall be charged with the administration and enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, except those powers, duties and functions conferred upon consular officers relating to the granting or refusal of visas ..."

It is a result of the above language that there is no central Departmental authority over visa adjudications. This was not inadvertent, since at the time of the 1952 Act close consideration was given to the establishment of some form of central reviewing authority, such as a Visa Review Board. However, the decision, as reflected in the present language of section 104(a), was to vest final and exclusive authority in the consular officer. As was stated in the committee report on the 1952 Act "the committee does not feel . . . that the powers, duties and functions conferred upon consular officers by the instant bill should be made subject to review by the Secretary of State."

Another aspect different from most areas of administrative law is that in the visa process application is not initiated on an even footing. As provided by section 291 of the Immigration and Nationality Act, "Whenever any person makes application for a visa . . . the burden of proof shall be upon such person to establish that he is eligible to receive such visa . . . and

that he is entitled to the nonimmigrant (or immigrant) status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person. . ."

In the context of nonimmigrant visa applications, this burden of proof requirement is further emphasized by section 214(b) of the Act. This states, "Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer . . . that he is entitled to a nonimmigrant status under section 101(a)(15)." This latter section defines the various nonimmigrant categories.

The actual statutory authority for a consular officer to refuse a visa is found in section 221(g) of the Act which reads:

"No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa . . .

(2) the application fails to comply with the provisions of this Act, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa."

This statutory limitation is further refined by regulation. Title 22 Code of Federal Regulations sections 41.90 and 42.90 mandate "A visa shall be refused only upon a ground set out in the law or regulations issued thereunder. The term reason to believe as used in Section 221(g) of the Act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive (a visa) as provided in the Act and as implemented by the regulations contained in this part. Consideration shall be given to any evidence submitted indicating that the ground for prior refusal . . . may no longer exist."

In essence, then, a consular officer's authority to refuse a visa on substantive grounds is limited to situations where he knows, or the record in the particular case provides reason to believe, that the applicant is ineligible. Moreover, the consular officer must by regulation (22 CFR 42.130) identify the specific statute or regulation on which the refusal is based and so inform the applicant. It is also required that the applicant be informed of any available administrative relief, such as a waiver of the grounds of ineligibility.

Once a visa has been refused, there do exist procedures for reviewing the refusal, albeit on an informal or advisory basis. For example, 22 CFR 42.130(b) provides that when a visa is refused by a consular officer, the refusal shall be reviewed by the principal officer at the post or his designated

alternate. If the reviewing officer does not concur in the refusal he has the option of referring the case to the Department for an advisory opinion or assuming responsibility directly for the case.

Another part of this same regulation (42.130(c)) establishes a mechanism for direct review of refusals by the Department. This reads:

The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if a . . . visa has been refused. The Department will review such reports and may furnish an advisory opinion to the consular officer for his assistance in giving further consideration to such cases. If upon receipt of the Department's advisory opinion the consular officer contemplates taking action contrary to the advisory opinion, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers."

Under the authority of this regulation, the Department will review visa refusals at the request of interested parties, including attorneys. If the review indicates that the consular officer acted in error, an advisory opinion will be provided to the consul setting forth the Department's understanding of the

UNAVAILABLE

case. While in a legal sense an advisory opinion is not controlling on the individual consular officer's action, as a practical matter we have experienced only rare and isolated instances where the Department's opinion was not accepted by the consular officer abroad.

To summarize, even though a consular officer does indeed have broad and individual power over visa applications, his actions in processing a case are governed by statute and regulations, and any refusal must be predicated upon either knowledge of reason to believe that the applicant is ineligible under a specified provision of law or regulation. When a visa is refused, review is available initially by another officer at the same post, or by the Department of State through the advisory opinion process.

While no system is perfect, the Department of State is very conscious of the necessity of processing visa applications not only in accordance with the technical requirements of law, but also on a fair, objective and uniform basis;

Management Improvement Efforts

The CA Consular Efficiency bill, recently forwarded to the Speaker of the House, contains provisions which will simplify consular processing and record keeping. Briefly, they are:

- o The enactment of a uniform standard for acquiring nationality by children of U.S. citizens who are born out of wedlock.

- o Changes to the criteria for determining acts of expatriation:

- requires actual intent
- eliminates provision for minors
- 19 yr. age of minority

- o A reduction in the time requirement for child adoption from two years to one year before derivative immigration benefits can apply.

- o A reduction in the period for the USG to presume fraudulent naturalization period from five years to one year.

- o An extension of foreign-state chargeability benefits to those qualified to "follow to join" an alien immigrating to the U.S.

- o An elimination of article-by-article inventory of the personal estates of U.S. citizens who die overseas. Inventories of general categories will be provided.

- o An elimination of the requirement for posts to keep duplicate copies of IV petitions and supporting documents.
- o Waiving the fingerprint requirements for NIV and IV applications.

In addition, we are working closely with all posts to streamline or eliminate a number of our forms, including the passport application. It is, however, in the area of automation that the most efficiencies can be realized.

AUTOMATION

The Bureau of Consular Affairs has been a leader in automated systems for many years with its programs covering domestic and overseas activities. In 1966 the Automated Visa Lookout System (AVLOS) was introduced to improve productivity in the namecheck function by providing up-to-date information on visa lookouts and refusals. The number of visas has grown significantly since then and the distribution of the consular workloads has changed considerably (London and Tokyo together issued over 1 million NIVs in FY 1985).

CA continues to move ahead in its automation efforts to make more cost effective and efficient the multitude of high volume, repetitive, and labor intensive consular operations and as advances in computer technology and communications permit more rapid handling and transfer of data.

While the day when passport application photographs and signatures or visa petitions are transmitted electronically to and from posts and other agencies worldwide has not yet arrived, there are in place a number of automated programs which reflect current technology. Whether these programs involve combatting fraud, coping with workloads, providing quicker and more efficient service, managing workloads, or a combination of all of these, the Bureau of Consular Affairs is in the forefront of automation. What follows is a summary of systems which are or will be available to consular officers and how these systems interrelate with shared automation efforts with other agencies.

Automated Systems

The AVLOS provides automated namechecking, by means of teletypewriters, for visa and passport applicants, updating of information in an electronic file on visa refusals and lookouts, and transferring of brief, informal, administrative messages. Recently, the capability has been added for several refugee-processing posts to namecheck an intending refugee against the AVLOS database and to create a file on that individual for later use by various refugee agencies in the U.S. AVLOS also provides the databases for the namechecking functions for other automated systems such as immigrant and nonimmigrant visas, citizens services, and teletype replacement program. It is operational at 75 posts in 45 countries and at 14 domestic passport agencies.

The Consular Lookout and Support System (CLASS) is the successor to AVLOS. It sets the stage for future consular efficiencies, interagency linkage and electronic information exchange as well as namecheck improvements of priority interest to the Vice President's Task Force on Combatting Terrorism, and the law enforcement. Responses to the Request For Proposal (RFP) are now being analyzed with award anticipated early in the third quarter. It will support specially designed linguistic namecheck routines for non-Roman alphabets, improve message reliability, enhance the trouble-shooting of problems, and provide management reports. It will also provide a framework for information transfer around the CA network, interaction with other agencies, and relatively facile incorporation of new technology in the future.

The Immigrant Visa Applicant Control system (IVACS) is an automated IV case-tracking function. It maintains a database of all applicants, performs the AVLOS namecheck, prepares FBI and post clearance letters, produces addressed cover sheets for IV packets, assists in scheduling applicants for interviews, handles quota control function, prints the visas, and provides management reports. Twenty-one posts have IVACS, which account for 65% of the IV caseload worldwide.

The Nonimmigrant Visa Computer-Assisted Processing System (NIVCAPS) provides an index to NIV applicants, interfaces with AVLOS to perform namechecks, cross-checks the names in the immigrant visa file if IVACS is installed on the post's

computer, prepares statistical reports, and supports immediate retrieval of information to satisfy inquiries. NIVCAPS now operates at 15 posts, which perform 22% of all NIV processing around the world.

The Citizen Services System (CSS) was new in 1985 and so far has been installed at 8 posts. CSS automates the index of US citizens registered in a consular district, provides passport applicant namechecks, facilitates the recording and reporting of passport issuances, supports arrest case tracking and reporting, maintains welfare and whereabouts records, and produces doctor and lawyer reference lists. Future enhancements are planned, such as a federal benefits module.

Since 1980 the Travel Document Issuance System (TDIS) has automated the passport production process at 8 passport agencies with the use of minicomputers. The result is a secure, machine-readable passport, extremely difficult to imitate or alter. This system has replaced flexowriter machines (currently still in five passport agencies) and enabled the converted agencies to sustain and increase passport book production. In the Philadelphia agency a hybrid of this system has been developed in an experiment which employs microprocessors. The lessons learned on this pilot project should go a long way toward helping us meet another goal: automation that provides the high volume passport-issuing posts abroad with the capability of producing machine readable passports.

BEST COPY AVAILABLE

Within the Passport Services operation there is the Passport Files Miniaturization Project (PFM) which microfilms all passport applications and creates a computerized index for information retrieval. This is used to respond to inquiries from the public as well as other government agencies.

The Electronic Cash Register (ECR), in use at 91 posts, provides secure cash collection and accounting, performs transactions in two currencies and converts between them, and collects automatically many of the statistics needed for the consular package.

The teletype replacement program (TTYREP) provides the same functions as AVLOS by means of a CRT workstation on a minicomputer at a post. It is normally installed together with, and as a complement to, NIVCAPS since it permits namechecks which are independent of the NIVCAPS file. A different version of TTYREP is installed at 5 posts which have a WANG word processing system with a telecommunications capability to the Department.

The Immigrant Visa Control and Reporting System (ICARS) assists the Visa Office in allocating immigrant visa numbers to posts and INS by preference class and foreign state chargeability. Numbers are now sent to posts approximately two weeks earlier in the month than they were under the old manual system. ICARS also produces the immigrant and nonimmigrant

visa statistics that go into the annual report of the visa office. NIVCAPS and IVACS posts now regularly transmit a number of visa reports to VO on diskette for direct entry into ICARS.

The Consular Workload Statistics System (CWSS) permits forty-three posts with WANG VS computers to produce a diskette with the statistics required for the annual consular workload package, instead of preparing an airgram. Posts without the VS can arrange for their data to be loaded into the same diskette that is used by a neighboring post which has the system.

The Overseas Case Reporting System (OSCAR) will convert the Office of Overseas Citizens Services into a computerized office where all key records will be accessible through a computer terminal. Information to be stored will include arrest records; financial transactions for trust accounts, repatriation loans, and emergency medical funds; welfare and whereabouts cases; and federal benefits and various other non-emergency cases. There will be workload-related statistics for management and, later, an electronic link to CSS in the field. OSCAR will be implemented in the spring of 1986.

The Visa Information, Control, Tracking and Reporting System (VICTAR), in the process of being designed and implemented, will provide an index to files in the Visa Office

file room, an action assignment system, an on-line case inquiry capability for all of VO, and an extensive report generation capability.

The Correspondence Records Management System (CRMS) provides an index to documents, shows the author, addressee, and action officer, and gives the date action is due. Reports can be generated using a variety of criteria. This system has been installed in offices in the Bureau, and a new version was created for the field and has been installed at a pilot post.

While not automated programs in the sense of large systems, several word processing glossaries have been developed for use by posts with VS and OIS hardware. One glossary, in use at 58 posts, assists in recording anti-fraud data; others cover American citizen services matters and standard visa correspondence.

We currently are exploring the use of PCs overseas. Software is being refined which would permit a post with a PC to run NIVCAPS locally and also link with Washington and other posts in the foreign country through the VS computer at a larger post in that country. In addition, we are examining the feasibility of developing scaled-down versions of overseas software to assist posts which could profit from automation but are too small to warrant a minicomputer like the WANG VS.

In the area of interagency cooperation, the Bureau of Consular Affairs has been working closely with the Immigration and Naturalization Service to advance the integration and sharing of automated systems between the two organizations. CA and the Service have exchanged terminals in order to access each other's lookout databases, and plans are underway for a pilot project in Montreal to send data on immigrant visa issuance directly to INS's central records office.

CA is also working with the Drug Enforcement Administration and the Customs Service on the electronic exchange of lookout information and reader technology and with the Federal Bureau of Investigation on the possible electronic transfer of FBI namecheck requests and the associated responses. CA, will soon begin working with the members of the Federal Users' Group (DEA, Treasury, Customs, Justice, INS, etc.) to explore shared databases and the exchange of information in the Federal community. If we are to keep out the drug traffickers, the terrorists and the other undesirable elements from the United States, and if we are to be able to track nonimmigrant entry into and departure from the U.S., a considerable expenditure of funds is required.

CONSULAR FRAUD PROBLEMS

As the demand for American passports grew steadily and the worldwide volume of applications for American visas continued to increase during the past five years, the Department has been and continues to be confronted with the problem of fraud. The

EST COPY AVAILABLE

magnitude of this problem has been manifested in the growth of: 1) travel document fraud internationally; 2) the fraudulent acquisition and use of American passports and visas; and 3) cases of Federal benefit fraud overseas by aliens claiming beneficiary status under programs provided by agencies such as the Veterans and Social Security Administrations.

The value of American citizenship or nationality cannot be overstated, especially when one considers how oversubscribed our immigrant visa preference categories are in many countries of the world. Given waiting periods for some of up to ten years, the temptation to use fraudulent travel documentation to enter the United States illegally can become very attractive. Moreover, we see evidence of increasing fraudulent claims to U.S. nationality and citizenship made by American citizens on behalf of relatives living in foreign countries. Also, we have seen foreign nationals attempt to register their children at posts abroad as U.S. citizens, claiming that they were born in our country perhaps on a previous visit.

With regard to the problem of document fraud, I wish to make a distinction between two types: a) external fraud - an attempt to circumvent the consular process entirely through the counterfeiting or alteration of passports, visas and other documentation and b) internal fraud - an attempt to wrongfully secure a passport or visa through misrepresentation or falsifying information.

In recent years, the expansion and internationalization of external fraud has given our embassies and consulates a sobering picture of the extent to which foreign nationals attempt to evade our Consular operations overseas. Aside from the problems experienced by Mexico and Canada, with foreign nationals using it as a transit point for illegal entry into the United States, other more novel migration routes have also been detected. For example, by working together, the Department and INS have noted the following trends and patterns of travel to other foreign countries to obtain counterfeit travel documentation for their onward travel through Mexico to the United States: Cubans to Panama or Spain; Chinese to Bangkok, Singapore and Germany; Filipinos to Germany; Nigerians and Ghanaians to Italy and Belgium and Yugoslavians to various points in Europe.

As with external fraud, internal fraud has also been expanding through well-organized attempts, in some cases international, to beat the passport and visa issuance system overseas. Visa shopping is not a new phenomenon, as you well know, but in the past, such attempts at fraud were normally confined to posts within a particular country or even geographic region. In the past five years, we have seen a more global effort evolving in attempts to secure visas fraudulently, for example: Koreans in Athens, Nicosia and cities in South America; Filipinos and Chinese in Germany; and Ghanaians, Cubans, Indians, Pakistanis and Nigerians throughout Western Europe.

At a few posts, we regret to say, close to a majority of all visa applicants who are interviewed by consular officers engage in fraudulent attempts to obtain their visas. Those who then "shop around" for visas, either individually or as brokers, can shift their activities and move applications from one country to another within a week or less. Thus, what we have seen in recent years in the area of document fraud is the growth of organized groups engaged in concerted efforts, within their own countries and internationally, to perpetrate fraud against the United States for the purpose of gaining illegal entry to this country.

ANTI-FRAUD EFFORTS OF THE CONSULAR BUREAU.

At present, each of the three major CA offices has an anti-fraud unit, with the consequent overlapping of functions and duplication of efforts. In order to assure that our scarce resources are used most effectively, I recently established a separate anti-fraud office, to be headed by an SES officer. The present three units in place will be transferred to the new office and will be organized along regional lines.

During the last year, anti-fraud efforts which historically were adequate for a particular post have been sometimes suddenly overwhelmed by the flow of illegal migrants attempting to circumvent the visa system or to secure visas through internal fraud operations. Regions or countries which have enjoyed reputations for being relatively fraud free have become

transit zones and staging grounds for attempts to circumvent the system or targets for visa shoppers from growing migration streams.

To counter this growing threat to the integrity of the visa system, the Bureau of Consular Affairs has:

- o reinforced its efforts in information gathering, analysis, and dissemination;
- o sought increased cooperation with INS and other U.S. agencies;
- o sought and gained the support of foreign officials and airline officials; and
- o begun to examine new ways of visa processing which will be less susceptible to the efforts of counterfeiters and document alterers.

In the field, these efforts have been translated into several effective efforts to enlist the support of foreign officials and airline officials. At the instigation of consular officers, law enforcement actions by foreign police officials in Korea, the Philippines, West Germany, Belgium, Israel, Turkey, Indonesia, Columbia, Jamaica, Costa Rica, Nepal, Mexico, and Peru have caught or disrupted major smuggling or counterfeiting rings in the past year.

Information sharing with countries with similar immigration problems - - West Germany, the United Kingdom, Canada, and Australia - - has increased our anti-fraud effectiveness. Attempts to establish new illegal migration routes through several of these countries have been stopped as a result of joint information development.

The Bureau of Consular Affairs will continue in these efforts and to explore other avenues which will increase the cost of fraud to those who would wish to circumvent the system; decrease the reaction time of anti-fraud efforts; and implement proactive efforts whenever possible to aid in forecasting fraud attempts.

Gramm-Rudman-Hollings Deficit Reduction

The efforts I have described above, particularly automation and anti-fraud, require large expenditures of funds. The senior managers of the Department of State have recognized consistently the importance of CA's programs to the overall goals of the United States Government to provide efficient and effective service to the American public, both domestically and abroad. Equal recognition has been accorded our efforts to prevent all undesirable elements from entering the United States, particularly drug traffickers and terrorists.

As a result of GRH, Bureau funds were reduced \$2,000,000 for FY 86. Certainly, a cut of this magnitude will hurt. By tightening up in other areas, however, I believe we can manage without serious detriment to our ability to provide consular services. For example, we have had unavoidable delays in our passport automation effort so the loss of \$1.6 million for domestic passport automation will not impede reasonable progress toward completion of this multi-year effort, provided adequate funds are made available in FY 1987 and 1988.

Similarly, a one time slowing of funds for the automation of consular sections abroad will be tolerable because the Department is in the process of selecting a successor vendor for all overseas computer systems hardware and we would want to be assured of future support. Full funding will, however, be required in FY 1987 and future years to assure completion of the many automation initiatives I have mentioned. The electronic computer supported interconnection of consular posts within countries and to our central systems in Washington is an absolute necessity if law enforcement agencies are to be able to access information on a real time basis. The interface of CA's lookout systems with those of other agencies is a high priority for the Department.

Clearly FY 1987 will be the pivotal period for us. The Bureau's FY 1987 request includes 1094 fulltime permanent positions and \$34,198,000 needed to issue 5,100,000 passports in the United States and to provide management and technical

support to approximately 260 consular posts responding to over 11,000,000 cases abroad. This represents unavoidable caseload growth, ranging from an increase of 6% in U.S. passports and visas to 3% in services to Americans abroad. The 6% passport increase represents a slowed growth pattern for passports due no doubt to terrorism and the decreased value of the dollar. On the other hand, the increased value of European currencies in particular has already stimulated a return to higher volumes of applicants for nonimmigrant visas. To meet growth in overseas workload, the Department is also seeking 34 new consular positions for foreign service posts.

Limitations on foreign travel also caused by GRH reductions would cause us to curtail consular management and policy conferences which have proved valuable in coordinating policy, establishing uniform practices and obtaining efficiencies and strengthened internal controls through management action. These limitations will also cause a curtailment of consular training. Here again, a pause will not seriously affect the effective functioning of consular operations.

There is a study group in the Department preparing options for the Secretary's consideration on how to handle the severe funding constraints possible in FY 1987 under GRH. While I do not know what might be proposed or adopted, I am certain that any further GRH cuts would have to affect consular operations. We cannot expect to be shielded from impact.

As I have previously stated, however, substantial savings cannot be obtained from consular operations without changing either the concept of service or the means of delivering it. The trade offs may be severe, and could include such proposals as greater centralization of domestic passport issuances and centralization of IV and NIV issuance abroad with concomitant increases in public inconvenience, the nonimmigrant visa waiver and a reduction of the range of services the United States Government may provide to its citizens in need abroad.

Domestically, funding limitations could cause staffing shortages and the return to massive backlogs in the passport agencies. Such cuts could also affect our capability to manage consular services in the event of terrorist or kidnapping crises, political or natural disaster or even to handle the day-to-day welfare and whereabouts cases. And, finally, major cuts would cause a slowdown and eventual halt in the development and maintenance of automated consular systems.

Mr. MAZZOLI. Thank you very much, Ambassador Clark.

Let me start with sort of a general question, and it gets back to what you said about you think you can handle this year's budget changes without too much trouble, but you worry a little bit about next year. To what extent does the fiscal year 1987 budget affect your service as you see it? When you say next year, I sometimes don't know which fiscal year we are actually talking about, because we are in 1986 and next year could be 1987 or it could be 1988.

Ms. CLARK. Fortunately, we are halfway through the fiscal year 1986, which is a considerable help to us, I think. I would see us cutting back about \$1.6 million out of the \$2 million cut on our automation in the passport agencies. At the moment, the passport issuance is down and we think for the present capacity that we can proceed to handle the workload there and still continue to give excellent service to the American public.

We do have an interesting experiment, a pilot project up at the Philadelphia passport agency that we have been working on this past year. It involves the purchase of off-the-shelf computers and equipment which will cost less. Furthermore, we think that in the next 60 days we will be able to produce at the Philadelphia agency the machine-readable passport. If this is the case, we can then proceed to install it in the other manual agencies at less cost.

The other money we will take out of our travel funds, and we will take approximately \$300,000 out of our automation programs for the visas. But we think that we can still go forward with the development of CLASS, which will be an improvement on the AVLOS system and important to the exchange of information with other agencies.

Mr. MAZZOLI. Let me ask you just to give me some general numbers. The current number of consular officers would be what, current staff?

Ms. CLARK. It's about 1,044; yes, 1,044.

Mr. MAZZOLI. They are deployed around the world, I guess, depending on how the need is seen? To that extent, do you, from your vantage point here in Washington, feel that the countries and the posts are being served as they should? Or are we short handed in some of these posts that have experienced increased workloads?

Ms. CLARK. We have had increased workloads. In fact, our non-immigrant visa issuance is once again rising as the dollar comes more into line and makes it very favorable for those with foreign exchange abroad. So, we anticipate that we will have an increase in nonimmigrant visa issuance this year of approximately 5.2 percent.

We continually monitor back in Washington the workload statistics that we see coming in from the posts. We have a fairly general idea of whether or not we need to augment the staff. We have reprogrammed positions from time to time if we felt the workload was decreasing in a particular post and increasing in another post. So, we have managed to keep abreast, I think, of the workload.

Mr. MAZZOLI. Let me ask you, I haven't done that much traveling but when I do, I try to just kind of stop in to see the consular officials. I know that many have had to use temporary work people. I remember once in Mexico City some of the children of Foreign Service officers were helping to organize the lines, and this sort of thing. To what extent do you depend—and when I say you, I mean the Service—depend upon what we would call noncareer Foreign Service personnel to do the work?

Ms. CLARK. Well, I would say it was a small percentage, but I think under Gramm-Rudman you will see a larger increase in that area. Usually we use the temporary employees during the peak season. We have certain peak seasons in various countries around the world. We do it then. But I would say, by and large, our workforce still consists of the professionals.

Mr. MAZZOLI. I am aware of the fact that there has been some movement toward using spouses of Foreign Service officers in both traditional as well as nontraditional consular activities. I wondered in this day and age of everybody denouncing Gramm-Rudman-Hollings—I mean, either we defy it or we denounce it; I am not sure which—however, in this new age in which we now live, do you see that as an opportunity to help? To what extent would that be impossible to fully implement simply because it would cost dollars, and those are the things you don't have as many of as you would like?

Ms. CLARK. I shall walk delicately around this problem.

Mr. MAZZOLI. I am sure you shall. We shall both walk delicately.

Ms. CLARK. This is one of the subjects which engender a great deal of heat from time to time, depending upon where you're coming from.

We already at certain of our posts where it is difficult to increase the numbers of people that are already there or we have a housing shortage, and so forth, we have used the spouse in a sort of a para-consular capacity. I would foresee under the Gramm-Rudman the use more and more of spouses in various posts abroad. And I would assume that it would be in sort of equal proportions, in other words, that they would be used in each cone, some to do political work, some to do economic, some to do administrative, and some consular.

That is a question, however, which is before the management council at this point in the Department.

Mr. MAZZOLI. One last question and I will turn the time over to my friend from California. Are you aware in this area of retrenchment any efforts to close consulates abroad? Have any been necessarily singled out for demise?

Ms. CLARK. Yes; we have seven on the list for fiscal year 1986. Nice will be closed. I have witnessed this now five times, the closing and reopening.

Mr. MAZZOLI. That's like trying to close a military post. They close them and then they sort of pop open again.

Ms. CLARK. Bremen is on the list; Rotterdam; Seville, Spain; Trieste, Italy; Salvadore da Bahia, Brazil; and Winnipeg, Canada.

Mr. MAZZOLI. Those plans are in movement now? Is that prospective closure or is that actually taking place now, a date certain?

Ms. CLARK. Well, I think the Under Secretary for Management has already informed the Foreign Affairs Committee that we were moving in that direction.

Mr. MAZZOLI. Thank you. My time has expired. The gentleman from California is recognized.

Mr. LUNGREN. Thank you, Mr. Chairman.

I am not going to hold my breath until I go to a hearing and hear someone say they like Gramm-Rudman-Hollings. I did some quick statistics on how terrible Gramm-Rudman-Hollings is. Do you realize that, even though we have a \$2 trillion debt now, under Gramm-Rudman-Hollings we will only have a \$3 trillion deficit by 1992? That will only give my kids and grandkids \$12,500 personal debt for the Government. And I can understand how we would resist something like that that is so terrible and awful.

I just think we are going to have problems. I understand your coming up, and I understand the theory, too. I would protect a lot of my stuff as much as I could and try and tell us what the worst-case scenario would be. But I think we're just not going to have the bucks.

I don't know what we're going to be able to do with it except to try and look where the impact could be the least, although I know that's difficult when you're involved in an operation that serves the people.

I understand that costs are up for passports. The fee for passports is what?

Ms. CLARK. \$42 for a brandnew one and \$35 for the reissuance.

Mr. LUNGREN. And that has gone up in the recent past, is that right?

Ms. CLARK. About 3 or 4 years ago.

Mr. LUNGREN. I don't know how you do analyses of this, but I just wonder, has it been studied for increased user fees in some of these functions?

Ms. CLARK. We did a fees study. Let me just turn to Mr. Parsons, if I may.

When did we do the fees study?

Mr. PARSONS. We just completed the fees study, and right now it would be—

Mr. MAZZOLI. Just for a second, before you continue, Madam, would you identify your colleague to the reporter?

Ms. CLARK. Mr. Donald Parsons, the Acting Executive Director of the Bureau of Consular Affairs.

It will be only the visas and not with the passports.

Mr. PARSONS. That's right; we studied all services performed overseas, the costs, and possible increases in certain fees.

Mr. LUNGREN. That's to recoup the direct costs, or does that—

Mr. MAZZOLI. Excuse me 1 second, I just apologize.

Maybe you could come up, because the reporter is having a hard time picking it up.

If you could just briefly summarize what you said up to this point and then continue with your statement. Just anywhere there's a microphone would be useful.

Mr. PARSONS. We have just completed our second survey in terms of trying to determine what the costs of our services are overseas in an attempt to recoup those costs by adjusting the fees that are charged.

Mr. LUNGREN. OK, I guess my question is, Does that include direct costs or does that include costs of personnel and having them there and the numbers that you have to have to perform that service, even though they may do something else as well?

Mr. PARSONS. Direct and support costs.

Mr. LUNGREN. And how about on passports?

Mr. PARSONS. The same, that includes—

Mr. LUNGREN. But I thought you said you just did it on visas but you haven't done it on passports.

Mr. PARSONS. No; we looked at everything, in terms of overseas costs.

Ms. CLARK. But we are raising only the visas fees.

Mr. PARSONS. That's right.

Ms. CLARK. The passport fees will remain as is at the moment.

Mr. LUNGREN. Even if Gramm-Rudman goes into effect?

Ms. CLARK. Even if Gramm-Rudman goes into effect. We certainly will not look at it until next year again.

Mr. LUNGREN. So, all these other things are going to happen instead of looking at the fees?

Ms. CLARK. Well, I think the consensus is that we have proceeded to develop the automation and so forth to have the ability to keep the costs down. We certainly have not had a corresponding increase in the number of services that we have extended to American citizens abroad, despite the large volume of travel; and we issued 5 million last year and collected \$170 million in fees.

Mr. LUNGREN. In your comments you indicated that, if we had these kinds of cuts, it would alter the automation efforts to deter fraud and interagency efforts to provide systems interface to prevent terrorism and drug traffickers. That sounds more frightening to me than raising the cost of passports.

I guess all I am trying to say is, that I am getting more and more pessimistic about Congress being able to do what it's supposed to do. I suspect that, if you rank things that Congress holds dearest and hears most about, there are certain other services that we will hear about and more Members will hear about and might get protected than your operation. I mean, I am just trying to confess that to you honestly. And I think we just got to bite the bullet and recognize that we are not going to have all the money we want.

Maybe we've got to look at raising fees that we haven't raised in the past more quickly, not that I like to go back to my constituents and say: "Hey, you used to get a passport for \$10, now it's \$42; and under my direction you're going to get to pay \$60 for it." But if it's that compared to some sort of interagency interface to help us make sure that we don't have drug traffickers and terrorists coming into the country, maybe we've got to do that.

Ms. CLARK. I might add, I am sure you know, that the fees go directly to the Treasury Department.

Mr. LUNGREN. I know. We're the authorizing committee, maybe we can look at some things. I am serious about this. Some of the agencies that do services and bring funds in, we ought to provide all the incentives we've got for that sort of thing.

How many consular offices do you have in Mexico at present?

Ms. CLARK. Do you know that?

Mr. PARSONS. All together in all the posts, I would say we have around 40, to 50.

Mr. LUNGREN. The reason I mention that is, as you may know, in the immigration bill that passed the Senate there is a Wilson amendment, which has a guest worker provision. One of the provisions there is that a percentage of the money earned would be withheld from those individuals and would be received by those individuals only when they return to their country. And presumably we're talking about Mexico primarily. The idea would be to use the consular offices in those areas for that purpose.

I had been informed via various grapevines that there is some resistance in the State Department to consideration for that. I just wondered if there is anybody—I don't know which ones or one of you would like to comment on this. I would love to hear your response.

Ms. CLARK. Mr. Lungren, I can tell you what our problem is. If we end up by trying to return the fees to the Mexicans or any other workers that return to their country, we are going to have to buy a lot of hardware, a lot of software, and add a lot of people. That really is an operation that would be totally new to us. We would require—

Mr. LUNGREN. So, what you are saying is that we should fund this cost. If that function is given to you, we should fund that?

Ms. CLARK. We would have to fund it; yes.

Mr. LUNGREN. And it seems to me that's a good answer and something that we ought to look into. Maybe that funding mecha-

nism ought to come out of the overall program, if we have such a program, that part of the costs will be borne by the employers who utilize this work force, if that's what they're going to do. It seems to me we ought to look at that ahead of time instead of imposing that obligation on you and then saying later on: "My God, we never figured out it was going to cost us any money."

Ms. CLARK. We also see a number of problems and potential fraud in that, because a number of the workers will have exactly the same name, et cetera, et cetera. So, it's going to take a tremendous amount of resources to work out—

Mr. LUNGREN. I know we had trouble this morning at our hearing trying to figure out if Mr. Medvid was the same Mr. Medvid that was interviewed the first, second, and third time. And everybody talked about photographs, and did he look the same, and thumbprints. I thought it was going to be the first use of the Governmentwide urinalysis.

I guess my time is up.

Mr. MAZZOLI. Well, more or less. It was such an interesting—

Mr. LUNGREN. I—

Mr. MAZZOLI. I was going to let the gentleman hang himself, just by letting the time—I am sure you were anxious for me to whistle it to a halt. [Laughter.]

There are times when our colleagues want more time, and there are times when they strangle and they really wish that, you know, the guillotine would fall in a hurry.

I will yield myself time.

I wonder, something that we have talked about in the past, Ms. Clark, and with one of your predecessors at least. That is the question of promotions within what is called the cone, the consular cone. I don't know to what extent you have any data on that. Do we offer young Foreign Service officers opportunities for career advancement in that cone? The burnout has got to be tremendous. It's really hard work abroad. Do they just move out when they possibly can into some other area?

Ms. CLARK. I think at the junior level the opportunities for advancement are there. For example, I got these figures from personnel. At the very junior level, from the 0-4, as we call it, to the 0-3, this is after they have received tenure, the promotion rate for consular officers is 47.3 percent. This compares favorably with the 46 percent for economic officers, the 55 percent for political, and the 43 percent administration. The consular has 469 as opposed to 364 for political.

At the next level, the 0-3 to the 0-2, the percentage of the eligibles promoted is 18.9 percent. And consular, out of 983, had 186 promotions compared to the political cone, which had 177 out of 933.

From the 2 to 1, there is a promotion rate which is roughly 14 percent for all cones.

So, we consider that there are opportunities at those grade levels to advance.

Mr. MAZZOLI. Well, that's good. I haven't seen these figures until this second. I hope that it represents the opportunity that a young person would have of making a full career in that area and staying in it. To me it is a very important service. Again, as I said many

times, it is the one service which probably comes in closest contact with the population of the country. In that sense, you represent the United States in a more personal way than maybe some of the other officers do.

The workload, of course, is increasing tremendously. The demands on that individual, intellectually and from the stamina standpoint, are quite markedly different than they were maybe a few years back, and they bid to get worse.

So, I think the State Department ought to reward that sort of vigilance abroad and that kind of loyalty abroad with an opportunity to be promoted. Eventually I hope they become ambassadorial rank. Now again, I don't know many of those, of course, political appointees, which sort of skew the figures; but I would hope—and if you have any data on that at some point that would be useful to see whether we have careerists, but from the consular service who become ambassadors.

Ms. CLARK. We have three ambassadors at the present time from the consular service.

Mr. MAZZOLI. Do you?

Ms. CLARK. Yes.

Mr. MAZZOLI. Good.

Ms. CLARK. I would like to say, Mr. Chairman, that I think the opportunities for consular officers have broadened considerably in the last few years. The long overdue recognition has finally come.

Mr. MAZZOLI. Good.

Ms. CLARK. They are getting more of the interfunctional assignments when they return to the Department and at post. We have had a number selected as deputy chiefs of mission in posts abroad. And we have also had a large percentage, I think, selected for senior training, both in the executive seminar and the war colleges.

Mr. LUNGREN. Is that a fairly recent phenomenon, or is this something that has been in motion for some time, that you see this sort of improvement in their individual situations on a fairly regular basis?

Ms. CLARK. I think it has been over a period of time, but I would say it has been more so in the last 5 or 6 years than ever before.

Mr. MAZZOLI. I appreciate your saying it that way. I like to think that some of the drum banging that we've done here and some of the emphasis that I think our committee has placed on it has helped in a fairly modest way in suggesting to the powers that be downtown that this group of people is performing noble service and really ought to be rewarded with the kinds of promotions that the other areas of political and economic and so forth seem to have had in the past.

Ms. CLARK. You also have a consular officer, Robin Bishop, who is attached to Mr. McCollum's office under our congressional program.

Mr. MAZZOLI. Very good, excellent. Welcome, it's just delightful to have you.

Let me shift for just a moment to kind of wrap up on the subject of Foreign Service spouses. I recognize that it can be a slightly delicate subject. The men or women who would be involved in this would be taking training. I guess they would be given a chance to become skillful in a particular function that they would be offered

to do. Is that the idea? In other words, they would not just walk in, but they would have training before they take on the mission abroad. Is that the general idea?

Ms. CLARK. Yes; appropriate training would be provided, either in Washington or at post. As far as FSO training, we have a special deputy chief of mission course. That was our highest casualty rate and jobs in Foreign Service. And all DCM's, it's a mandatory course regardless of what cone they may have come up in.

We also had a midcareer training program which lasted 5 months but has now been replaced by various segments. But it involved such things as courses on negotiations and the political aspects, economic aspects, and so forth.

And we have also had some selected for university training if they wished to avail themselves of that opportunity.

Mr. MAZZOLI. I think you call them FSN, Foreign Service nationals.

Ms. CLARK. Yes.

Mr. MAZZOLI. Is there any data that you have on how many of them would be working in the consular sections and?

Mr. PARSONS. It's about 2,000.

Mr. MAZZOLI. Something like that, about 2,000 and—

Ms. CLARK. Foreign Service nationals?

Mr. PARSONS. Yes, consular sections—

Ms. CLARK. That's the same figure as the—

Mr. PARSONS. It's a little under 2,000.

Mr. MAZZOLI. So, it's about 1,000 of each, both—

Ms. CLARK. Nearly 2,000—

Mr. MAZZOLI [continuing]. 1,000 Foreign Service officers and about 1,000 of the Foreign Service nationals?

Mr. PARSONS. Overseas—

Mr. MAZZOLI. Yes—

Mr. PARSONS. About 2,000—

Mr. MAZZOLI. Consular level—

Mr. PARSONS. Nearly 2,000.

Mr. MAZZOLI. I assume if what we said earlier is true and the budget changes, that there may be some need to explore it further, the use of Foreign Service nationals. If that's the case, is there some opportunity that we have the very best possible kind of service? What they do in working the consular services, of course, deal with their own country people, their own nationals. And that can be a source of some friction, I am sure, and it doesn't always provide the very best kind of climate. I wonder how you go about being sure that they don't become kind of like a small dictator or, on the other hand, to become too complacent or too compliant and maybe issue papers that an American, a U.S. person, might not issue.

Ms. CLARK. Well, first of all, I think we would be highly selective as to the countries in which we might increase the number of Foreign Service nationals, because in countries where we have high fraud we would be going in the other direction, quite frankly.

As for the Foreign Service national that occasionally gets a little officious—and I am sorry to say we have had them from time to time—happily for us the American public will usually write us back in Washington, or they will complain to some American at

the post. We certainly look into it. If we find the facts are true, we transfer the person so they are not dealing with the public.

Mr. MAZZOLI. I appreciate that very much.

My time has expired. The gentleman is recognized.

Mr. LUNGREN. Thank you, Mr. Chairman.

One of the things that we talked about in our panel this morning with the INS was the problem of not people who have come across the border illegally but those who, once here, have overstayed their visa. Is there a mechanism by which the INS informs you of someone who has overstayed the visa, or you inform them? Or how does that information system work, and how well is it now working?

Ms. CLARK. There is a blue form, is there—I will turn to Mr. Scully, if I may.

Mr. SCULLY. Mr. Lungren, I don't have figures on it, but there is a longstanding arrangement between the Service and the Department that, when an alien is apprehended or located in the United States out of status, the Service prepares a report on that action. A copy of the report is sent to the consular office at which the visa that that alien possessed was issued.

In addition, when an alien is either excluded at a port of entry or voluntarily withdraws his application for admission at a port of entry and departs, a report of that is also prepared by the Immigration Service; and copies of those reports are also sent to our posts abroad. That arrangement between us and the Service is of many years' standing, at least 15 years, I believe.

I personally cannot give you the numbers of reports that flow back and forth, but perhaps someone else could. But I do know that that arrangement exists. It does work.

Mr. LUNGREN. I guess my question was not very precise. What I am really interested in knowing is, Who takes the initiative, or is there any continuing responsibility that your operation has with respect to someone who has been granted a visitor's visa of a certain period of time and has not returned to their country of origin after a period of time? Is that entirely within the ambit of the INS and they only notify you once they have apprehended someone who hasn't come back?

Mr. SCULLY. That's correct, sir. We do not have the capability at posts abroad of trying to monitor the return of people to whom visas have been issued.

Mr. LUNGREN. So, so far as your operation is concerned, you issue the visa at the consular office. And really, once they leave and get to the United States, it's in the hands of the INS? And you would hear about it if the INS is lucky enough to apprehend them? As they said, one of the ways in which that happens is when one of them walks into their office and tries to get more services, and they discover that they're not here—

Mr. SCULLY. There may from time to time be anecdotal information that will reach a particular office, perhaps from someone else in the community, that sort of thing. But there isn't any regular program for that.

Mr. LUNGREN. OK. Let me ask you a general question Madam Ambassador. Is the Immigration Nationality Act properly capable of administration by your people in their assignments presently?

Or are there some specific changes you would suggest that would help the consular officers in their decisionmaking?

Ms. CLARK. Well, there are some changes that we would like to see made which we think would be of assistance in tidying up the act and which we put in our consular efficiency bill that I think is now with your committee.

Mr. LUNGREN. So, these are the recommendations you have made.

In the area of determining the bona fides of nonimmigrants, what tools are available right now to help the officer in determining whether in fact the visitor is actually a permanent or a prospective permanent immigrant?

I realize it is the experience of the officer asking the questions.

Mr. PENNER. Absolutely.

Mr. LUNGREN. There are all kinds of people lined up, and it's probably a lot to ask for an officer to make a determination with the workload they've got; but what do they use?

Mr. PENNER. More than experience, certainly training as well. We start right with basic training courses that emphasize the variety of ways in which bona fides can be established. Certainly this is helped then with experience on the line and line officers and then their own, hopefully, enlightened management and supervisor.

I can't point to any one specific tool. We provide in our training and in the guidance notes a variety of things to examine and lines of questionings to explore. This would be things that the applicant would present. As you know, the applicant has the burden of proof. This would be things like job and family, et cetera. All of this is in the procedural notes that we provide.

Mr. LUNGREN. That brings me to the next point. I am looking at some figures. It appears that the greatest volume of visas denied relates to the question of a public charge problem.

Mr. PENNER. That concerns immigrant visas.

Mr. LUNGREN. Right. I am moving on to immigrant visas.

Mr. PENNER. And I might add that of that majority, sir, if I could interject, most of those are overturned at a later date. That is to say, at the time of application the applicant did not have a job or sufficient proof that he or she would not become a public charge, and that is changed subsequently.

Mr. LUNGREN. I see. It says, the figures I have got here for fiscal year 1983, for instance, 18,000 were denied, but then 13,000 were overcome, leaving a balance of 5,000.

Do you have any comment as to whether the current public charge criteria is, in your view and the view of your officers who actually have to make those decisions, satisfactory for the consular officer to make the determination?

Mr. PENNER. That public charge criteria is not a static thing. It has changed several times over the past years during which I have been a consular officer. And I would—

Mr. LUNGREN. How do you like it right now?

Mr. PENNER. I believe it's working sufficiently well and it is adhered to sufficiently by the consular officers.

I am reminded of one additional tool. Certainly all visitors as well as immigrants are run through our AVLOS system or microfiche as an additional review. Your earlier question concerning

public charge or bona fides as a visitor as opposed to a permanent resident—whether they are checked—we utilize this AVLOS tool to check all people who come through the system.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. LUNGREN. Could I just have one question more?

Mr. MAZZOLI. Go ahead.

Mr. LUNGREN. Again, this is anecdotal, but it's the kind of thing that I hear about from my constituents. About 2 years ago, *Sixty Minutes*, as they usually do, did a very nice exposé on immigrants in a particular community in this country. I think it was Milwaukee, but I am not sure. They dealt with some person who had been—oh, I shouldn't have mentioned Milwaukee—

Mr. SENSENBRENNER. I was just going to say—

Mr. LUNGREN. It probably wasn't Milwaukee—

Mr. SENSENBRENNER. Make it Massachusetts.

Mr. LUNGREN. It may have been Massachusetts.

Mr. SENSENBRENNER. He meant to say Massachusetts. [Laughter.]

Mr. LUNGREN. They were focusing on an individual who had been listed as a sponsor for immigrants to the United States, about 16 or 20 different people, all of which had subsequently gone on welfare. It is kind of difficult, I guess, for that person to support anybody else coming in.

Mr. SENSENBRENNER. Will the gentleman yield? It probably was Milwaukee, because we have some of the highest welfare rates in the country.

Mr. LUNGREN. I knew I was on the right track.

I guess my question is, I get people saying to me: My God, how can you have that happen? Don't you folks have that kind of information funnel in the system? And my response was: Well, to prosecute those cases, you're asking a U.S. attorney who's busy with a whole host of other things to do it. Well, they said: How about on the front end? How do you make sure that they are not going to be able to bring somebody else in? As far as you folks are concerned, what kind of checking system exists and how valid is it if someone comes in to one of your offices and puts down who they have that is going to sponsor them and take care of them? Do you have any way of checking through that computer system you mentioned that would come up and say: Hey, this guy's already sponsored 16 people from the same country?

Mr. PENNER. The computer system only deals with the applicants, not with the sponsors. Certainly, as each—and you're referring here to immigrant visa applicants—

Mr. LUNGREN. Correct.

Mr. PENNER [continuing]. Present papers require, among other things, notarized affidavits. There is undoubtedly a certain amount of fraud in that connection.

But no, we do not maintain sponsorship files. That is not part of the normal procedures, although at certain posts, if one becomes aware of this kind of thing, it certainly could be used locally.

Mr. LUNGREN. That may be something for our committee to look into. Perhaps that is a body of information that we might need.

I have got a lot of other questions.

Mr. SCULLY. Could I add one comment, following on to Mr. Penner's remarks?

I will have to leave that to you and the chairman to determine. It has been my experience that consular officers tend to look askance at affidavits of support that are from unrelated people. The closer the family relationship is between the visa applicant and the person guaranteeing the support or purporting to do so, the more likely it is to be acceptable. But when you start getting out into distant cousins or friends and things, consular officers have a tendency to be very, very skeptical about the worth of those documents.

That, of course, becomes then a contentious issue from the other side, because the claim is that we are casting doubt on the good faith of this American citizen who has offered to do this.

But I think that has been my experience, and I don't know whether my colleagues have the same experience.

Mr. LUNGREN. If I could just, if you will indulge me a minute?

Mr. MAZZOLI. Certainly.

Mr. LUNGREN. So, under those circumstances, if that person were initially denied, they could come back with notarized documents, and so forth, from the alleged sponsor and present it. And at that point in time, the consular officer has just the notarized certificate in front of him with really no way of checking the validity of the—I mean, if the individual lied, and so forth, or was someone—

Mr. SCULLY. The consular officer, nonetheless, has to be satisfied that this individual really is willing and able to do that. And the basic question if there's no family relationship or if the family relationship is an extremely distant one, the officer has to ask himself or herself is, what motivated this person to make this affidavit? And does it have any meaning? Is there any reality behind the words on that piece of paper?

My experience is that, unless there is a pretty close identifiable family relationship there, some strong evidence that would corroborate this motivation, consular officers by and large are not going to accept those things and take them at face value.

Mr. LUNGREN. Thank you very much.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Wisconsin.

Mr. SENSENBRENNER. No questions, Mr. Chairman.

Mr. MAZZOLI. I will recognize myself for a little bit more time here.

I guess I am a little bit surprised at the figures my colleague from California talked about: 18,000 denials, of which 13,000 were later overturned on the basis of public charge in immigrant visa situations. Would you have any idea, Mr. Penner, I was just mentioning the 18,000 denials, the 13,000 overturns later—would you have any idea what kind of immigrant visa cases these were? They weren't spouses—

Mr. PENNER. Regarding the denials, Mr. Chairman, or the refusals that were overcome?

Mr. MAZZOLI. I shouldn't say denials, but refusals which were later overcome, did they fit in any kind of categories? I mean, it would seem to me that an individual who is in the United States who is petitioning for a relative to come in from abroad and that person presents himself or herself at a consul's office and says, I want to be reunited, it would seem to me that the public charge

would probably not be a major factor. It would seem like to me, well, obviously—

Mr. PENNER. It is a major factor. It is one of several factors. But quite frankly, those refusals which are overcome relate not just to job offers or the failure to meet the public charge. Oftentimes documentation in general is lacking in one field or another. I mean, we are talking about birth records, marriage records, police records, et cetera. And at the time of application one or another may be failing.

Mr. MAZZOLI. So, actually, it isn't that you are asked to have too many standards to be met. I mean, what my colleague was asking, should there be any changes made that would lessen this workload by eliminating some of the early refusals, which, for the most part, the large percentage of them are overturned later. And it's like you're doing double work.

I just wondered if there is anything we can do to eliminate that so, instead of having that many refusals, you reduce it to the ones where there is really more than just simply a perfunctory gathering of paper, because twice you have to look at that paper or—

Mr. PENNER. I agree with you completely. As you know and as you correctly have pointed out, the immigrant visa is our the most labor intensive product and takes several hours in processing.

Mr. MAZZOLI. Ambassador Clark has mentioned that the State Department has sent up a series of recommendations that could fit into our efficiency bill. I haven't studied them, and if I did, I probably wouldn't understand them. But I assume that they somehow maybe would eliminate workload?

Mr. PENNER. Well, two specific things I am reminded of: One is the actual fingerprint requirement that is still carried on and is a laborious thing. Second, if I am not mistaken, there is also the requirement for duplicates kept at the post overseas.

Mr. MAZZOLI. Duplicate copies—

Mr. PENNER. I guess that covers it, Ms. Clark. I don't know if you want to—

Ms. CLARK. I was going to say the FBI has told us they don't use the fingerprints that we take. That is a very time-consuming process overseas.

Mr. MAZZOLI. Those are two of the points, the waiving of the fingerprint requirement for NIV and IV, and then elimination of the requirement to keep duplicate copies of IV petitions.

Mr. PENNER. That's correct, Mr. Chairman.

Mr. MAZZOLI. Very good.

Let me shift for a moment to something that—I guess it was your immediate predecessor who was always very ardent about; I presume that he still is. Now he is back at home. Maybe he can continue to haunt us, now that he's back in the United States. But about the visa waiver in all of its wondrous splendid glory, how do you all feel about that? Do you have any kind of position or some of your colleagues who may have dealt with this? I imagine he's going to be hired as a lobbyist. Probably that's going to be his second incarnation.

Ms. CLARK. He hasn't changed his viewpoint on that.

Mr. MAZZOLI. I am sure he delivered it very pungently often.

Ms. CLARK. We certainly favor the nonimmigrant visa waiver. However, I think, as I have said before, we would like to ensure that the necessary safeguards are there so that the tracking of the people who enter and depart the country can be noted.

Mr. MAZZOLI. We have, if I am not mistaken—and our bill has gone through so many modifications, I am a little bit bedazzled by it. But it seems to me that in this most recent form, which is now before the full committee, it has a kind of start toward a nonimmigrant visa waiver. So, I guess that's the one that Congressman Fish introduced and was able to put on in his subcommittee. That would, I assume, if it were to pass, would lessen some of the workload certainly.

Ms. CLARK. Yes, one of the things that we would like to see, however, is not a limitation on the number of countries. If you limit it to a specific number, our Secretary of State is going to spend his life trying to justify why somebody who's ninth on the list or thinks they ought to be first on the list is not there.

Mr. MAZZOLI. Well, in that connection, of course, some of us probably would have to be assured that the thing will work. I guess that's really the reason why we wanted to start out as a sort of pilot project, simply to see if it will work. I mean, will we be overwhelmed with people coming in, some of whom don't leave? Is it going to be just as routine as Americans going to Western Europe, 99.9 percent of whom return with that problem?

I guess what we need is some assurance that before we say virtually most of the countries is to be sure that the thing operates, the technology is there for following the people, for making sure that they have left when the departure time has arrived. So, I guess that's the reason why the bills have probably more limitations that you would perhaps like to see.

Ms. CLARK. We could still have a pilot project but just not specify the number.

Mr. MAZZOLI. Yes, maybe we will have to do something like that.

Ms. CLARK. The other thing that we really need, this is not the Department of State funding but it becomes the INS and the Customs funding, but in order to really utilize the machine readable passports and what we hope will be a machine readable visa one of these days, we do need to look at obtaining the readers at the ports of entry.

Mr. MAZZOLI. It sounds good.

My time has expired. The gentleman is recognized.

Mr. LUNGREN. Thank you.

Back on that question of affidavits of support, I know on a number of occasions in the past the Congress has considered but never acted on the question of making the affidavits of support legally binding on the individual who is to be the supporting party. Someone suggested one of the ways you could do it is make the U.S. Government the third-party beneficiary of the agreement, that is, if they don't make payments the Federal can then go and try and recoup those payments from the individual who has pledged that support.

Has there been any thought of that in your operation as to whether that would be of any assistance?

Mr. SCULLY. Mr. Lungren, some years ago we did consider that as a possible proposal to present to the Congress. I think, however, to a certain extent it may have been rendered in part obsolete by some amendments to the various benefits programs under which an immigrant who applies for various kinds of benefits within 3 years following admission, where there's a means test—and most of them have a means test for eligibility—the resources and the income and resources of that immigrant's sponsor are attributed to that immigrant for purposes of determining eligibility under the means test, or whatever these benefits are.

Moreover, there is a provision in this legislation in these various benefits bills under which any benefits wrongfully paid to the immigrant would be recoverable from the affiant. Now, these provisions of law, it seems to me, have essentially accomplished more or less what would have been accomplished by this kind of a direct amendment.

Mr. LUNGREN. The only problem with that is, as I understand the way it works, is that it allows them to actually compels them, I would assume, to deny them benefits in those cases where they are federally assisted benefits. In many States and localities because of certain obligations imposed on those States by their own State constitutions, they may or may not be able to do that, because the individual is not legally required to give the support to that person. If a public policy decision is made at the local level we're going to have somebody sitting out there on the street and, as a matter of course, we have an obligation to help these people. It would be great if we had some way to go after someone who had the legal obligation, but no such legal obligation exists.

Mr. SCULLY. Well, it may be that we would need to take another look at this proposition in light of that. But I think, frankly, in our office over the last 6 or 7 years the issue has not really come up largely because of these other amendments.

Mr. LUNGREN. You mentioned a little bit earlier some of the concerns that you had about funding decreases that might affect your ability on antifraud measures, particularly where you are trying to computerize and automate certain functions. Do you have a list of particular countries in which the greatest instance of fraud occurs in order to obtain entry into the United States?

Ms. CLARK. We can certainly get that list for you very easily.

Mr. LUNGREN. Well, I guess my question would be this. If there are some countries that are more prevalent—

Mr. PENNER. Yes, high-fraud-prone areas.

Mr. LUNGREN. Right, that's what I am asking. Do you have specific policy or measures to put into effect in those high-fraud-prone areas?

Mr. PENNER. Absolutely.

Mr. LUNGREN. Could you tell us what those are?

Mr. PENNER. In fact, when you talk about fraud, though, you are not talking about one specific thing; you are talking about a range of problems, some internal and some external, some things that are part of the process of applying for the visa, and some things that reflect the integrity of the visa itself. Both those factors come to play.

We have, for example, at some 16 high-fraud-prone areas a technique used to try to guarantee the integrity of the visa itself. And this is a device called the counterfoil, which I have brought and copies of which are here, which try to prevent—

Mr. LUNGREN. The counterfoil—

Mr. PENNER. These are devices which would, hopefully, prevent the holder of the visa from taking the visa out of the passport and using it someone else's passport, it adds to the integrity of the visa document itself, since these little counterfoils are difficult to counterfeit in themselves.

Yes, we do have these. And we have in fact focused on specific areas of the world where we see fraud this happening.

Mr. LUNGREN. One last question, on the area of marriage fraud, and I know that may be more in the realm of the INS in making determinations when people get here, and so forth. Have you looked at that as a particular problem? Do you have any recommendations with respect to changes in the law?

The reason I ask that is, several of us have come up with some legislation, primarily Bill McCollum's legislation, to create some presumptions and some standards, one of which is the two people presumably to be married at least speak a common language so that might be a better indication that maybe they are getting married for purposes they understand. I know that's a killjoy amendment. And body language does not count, I might add.

Ms. CLARK. I think I could say, Mr. Lungren, that we all share considerable concern over the sham marriage fraud. But let's say the enforcement in trying to sort this out is going to create a lot of headaches. But we have been talking back and forth with INS on this particular subject.

Mr. LUNGREN. Our approach is to basically come up with some objective standards, common language, maybe even put in a requirement that they have met one another before. That may cause some trouble with some folks, mail letter marriages, and so forth. That might be a protection against it. In fact, we may help reduce the divorce rate in the United States if we get the right bill.

We are going to try something. Maybe when we have a good look at it, we might send it over to you folks for comments as well.

Mr. MAZZOLI. The gentleman is recognized.

Mr. SENSENBRENNER. I have one quick question.

Mr. MAZZOLI. Certainly.

Mr. SENSENBRENNER. What has been done in the case of stolen visa stamps? I would guess that there were visa stamps that were stolen out of the U.S. Embassy in Tehran at the time of the takeover. How do we make sure that those stamps are not used for fraudulent visas?

Mr. SCULLY. Once the hostages were released, Mr. Sensenbrenner, the Secretary of State revoked all nonimmigrant visas issued by any consular office in Iran, for precisely that reason. So, no nonimmigrant visa bearing any indicia from any of the Iran posts—Tehran, Shiraz, or any of the other consulates—is valid. They were all revoked in 1981, within about 1 month after the hostages were released, once we had pretty certain knowledge that those plates and things had not been destroyed and that they had fallen into

the hands of the terrorists who took the Embassy. So, we did that precisely for that reason at that time.

Mr. MAZZOLI. Staff would ask the question of U.S. passports issued in Tehran, whether they were—

Mr. SCULLY. I think I would have to turn to our colleagues in the passport office on that one.

Ms. CLARK. Carmen, do you know the answer?

Mr. DiPLACIDO. The issuance date on the passport would be the distinguishing factor as to whether or not it would be still valid. Some of the other ordinary devices that are built into a passport to see whether or not it was altered or forged or whatever would still be there.

Mr. MAZZOLI. Unfortunately, we have a vote. I would ask you all if you could just remain. I do have just one area that I would like to get into before we shift the panel.

We will be back in just a moment.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

The last area that I would like to ask a few questions about—and I am really a babe in the woods when it comes to this—is the question of business specific visas, the B-1 visa for visitors for business short term, the E visa for the treaty traders and treaty investors; H-1, persons of distinction; L visas for intracompany transfers; and I guess there's a J visa somewhere tucked in here, too, that I can't even see.

I wonder if maybe, Madam Ambassador, you or any of your colleagues might be able to address, to what extent are these visas difficult to use because of the paperwork? To what extent should they be hard to, in effect, employ because there ought to be proof positive that the individuals coming in are coming for those purposes? Are there ways to streamline the issuance of them? If so, what are some of the possibilities that might fit into it?

Anyway, I would just kind of open it for just a general discussion, if you could.

Ms. CLARK. Why don't I turn to the experts on this, if I may.

Mr. MAZZOLI. Thank you very much.

Mr. PENNER. Let me begin by suggesting that your first category, your fundamental category of B-1, the simple businessmen visas, by and large almost all worldwide are issued as what we call multiple indefinite: good for the lifetime of the holder. So, even if the individual gets another passport, he can continue to use the original visa which we issued.

The other categories that you specified, the E, the treaty trader and treaty investor, granted, that is a decision made by the consular offices overseas; and it's based on a certain amount of documentation. But this kind of documentation, I would submit, would be fairly fundamental because your E, treaty trader, treaty investor, comes here, has to meet a certain amount of requirements by law on investing risk capital or setting up a situation as a treaty trader.

In terms of streamlining, I would—

Mr. MAZZOLI. If I might back you up for a second. Mr. Penner—

Mr. PENNER. Sure.

Mr. MAZZOLI. The treaty trader indicates that there has to be a treaty between the United States and some country. I wondered, do you know how many treaties exist, offhand?

Mr. PENNER. Thirty-nine, if I am not mistaken.

Mr. MAZZOLI. Is that right, 39? Most like, for example, the EEC countries and—

Mr. PENNER. That's correct. I would be happy to submit a list, if you would like.

Mr. MAZZOLI. That would be useful to have. I would appreciate it very much.

[See appendix at p. 111.]

Mr. MAZZOLI. For example, if I were to come into a post in, say, Rome, and I presume we have a treaty with Italy. I assume that that is one of the countries.

Mr. PENNER. Yes.

Mr. MAZZOLI. Good. And I say that I want to be admitted to the United States under an E visa as a treaty trader. What do I have to show the consular officer then or at some later visit?

Mr. SCULLY. Mr. Chairman, there are two possible situations that might exist. One, this applicant you are talking about might be an independent entrepreneur. The other situation would be that the applicant would be an employee of a company. Now, the independent entrepreneur would have to show documentation relating to the business that he or she was establishing to indicate what—or had already established indicating what trade was going to be, that sort of thing.

Mr. MAZZOLI. They have to show you a certified check for the quarter million or whatever it is they are supposed to invest?

Mr. SCULLY. We would require more, I think, than that. By and large, we don't deal in these cases with statements of intention. We are looking for not necessarily a completed transaction, business activity already established, but at least some steps leading toward that, rather than just simply a statement of proposed future intentions.

Now, it's very difficult to say precisely what documents would have to be presented, because each situation is going to be particular. And, therefore, the officer has to make a judgment in terms of what documents would be suitable to corroborate the applicant's statements.

Mr. MAZZOLI. The visa is not issued usually in the first visit. You're talking about repeat visits and further—

Mr. SCULLY. Not necessarily. What you find typically is many of the traders and investors are represented by attorneys. Not all, but many are. So, a lot of this work will have been done before the applicant gets there. It may well be that the applicant will arrive with a full dossier, everything corroborated, all the documents in order, every point covered.

Mr. MAZZOLI. How long does this visa last? Is it for a determinate period of time, or are they indefinite, lifetime?

Mr. SCULLY. Well, the normal maximum validity of the visa itself would be 5 years. Now, the authorized period of stay in the United States can be indefinite in character. It has to be renewed incrementally. Once the individual arrives in the United States, he or

she is not admitted for an indefinite period. He or she is admitted for a 1-year period.

Mr. MAZZOLI. A 3-year period.

Mr. SCULLY. But periodically, the individual would have to apply to the Immigration Service for extension of stay. Now, that can be done an indefinite number of times.

Mr. MAZZOLI. An extension of stay is granted while they are in the United States—

Mr. SCULLY. That's correct.

Mr. MAZZOLI [continuing]. They really never have to go back—

Mr. SCULLY. Many of them do travel, obviously, for business reasons, but they wouldn't have to leave the United States and return for purposes of prolonging their stay.

Mr. MAZZOLI. That's what my question is—

Mr. SCULLY. That's correct, yes.

Mr. PENNER. They must continue to be in the same status, that is to say, company business or what have you. They cannot change the business relationship after they come here.

Mr. MAZZOLI. If I understand you correctly, Mr. Scully, you said that some of these E visa holders would be employed by a company.

Mr. SCULLY. Yes.

Mr. MAZZOLI. They would—

Mr. SCULLY. Yes.

Mr. MAZZOLI. I thought—

Mr. SCULLY. That's just in the nature of international trade, Mr. Chairman. When many of these treaties were originally written in the 19th century—and some of them do go back, the British Treaty goes back as far as 1815—much of international trade was carried on by individual entrepreneurs or small informal associations. Nowadays a great deal of it, in fact most of it, is corporate. So, we have separate tests. An employee who is seeking a treaty trader or a treaty investor visa as an employee has to be at a certain level of employment, because we do specifically exclude from treaty trader and treaty investor status common, ordinary laborers.

Mr. MAZZOLI. That's what I was wondering. Do the people who would come in as employees of companies have to proffer the proof that they made the investment? Or does that waive the need to show investment at that level?

Mr. SCULLY. No; they would have to present documentation indicating that the company was engaged in trade or that the company had made the investment.

Now, typically what you will find, though—

Mr. MAZZOLI. And how does that differ from a B-1 visa?

Mr. SCULLY. The B-1 visa is an interesting, very broad category. Basically, it simply is defined as someone coming temporarily for business, with an exclusion of people coming to perform temporary services or labor. Now, this is so general in character that it is really a very difficult definition. Let us say a foreign corporation sends a representative to the United States to negotiate a contract with a prospective American purchaser or a prospective American seller of something.

Now, we hold that an alien coming for that purpose is properly classifiable as a B-1. And yet, if one desires to do it, one can say

that that alien in fact is performing services or labor in the United States, he is engaged in carrying out his employer's instructions to come to the United States to negotiate a contract. That is a service he is performing for his foreign employer.

Yet clearly, that is the kind of activity that is intended to be included under the B-1. The real issue—as Ms. Clark pointed out in her statement—is where is that dividing line between those legitimate business activities that are properly classifiable as a B-1 and those activities which really are skilled or unskilled labor? It's an issue that has been—

Mr. MAZZOLI. Well, do you think—

Mr. SCULLY [continuing]. Interpreted many times.

Mr. MAZZOLI. At some point we may well revisit the subject of visas, and so forth. Do you think that these need clarification and a little better targeting so we know—for example, I was surprised that an employee would fit into the treaty trader or treaty investor category. I would have, just from the outside, felt that this meant some investor, some person who is an entrepreneur, but not a high-level employee of a corporation which is making the investment.

It seems to me that person who comes in to tend to the company business is coming as a visitor for business, would be coming as perhaps an intracompany transfer for a moment or a period of time.

Mr. SCULLY. That's a possibility, Mr. Chairman. He might be classifiable as an intracompany transferee.

Mr. MAZZOLI. Just out of curiosity, when was the last time these visas were defined or the last time any clarification was made?

Mr. SCULLY. Except for the K, L, and M categories and some technical amendments to the H categories, they all date from the original enactment of statute in 1952. And some of them, of course, were carried forward even from the 1924 act with just essentially editorial changes to bring them into the scheme of—

Mr. MAZZOLI. Let me ask you just a couple of things. One is that I would be pleased—and I am pretty sure that I speak for my colleagues—if maybe at some point the consular office could give us some ideas of where maybe some of the problems occur where some of those vague areas are, and maybe some suggestion on language that would clarify. Maybe we want to scrap some categories entirely, give them new names, and peg them to conditions that are—you know, current conditions are far different than they were in 1952. That is, after all, 30 years ago. With jet travel and with multinational corporations, God knows we've got a very different economic ball game being played in this world now than there was in 1952. So, some of the categories which may have seemed very normal and fit the bill for them may be totally archaic.

So, I would ask for some help in that direction.

Second, with respect to the B-1 visas, I am told that there is such a thing called the *Bricklayers* decision, which has been, I am sure, written about at almost nauseating length.

Madam Ambassador, maybe you can summarize where we are with that thing and to what extent has that impeded the free flow of business people in and out of the country, as we hope that B-1 visa was intended to do?

Ms. CLARK. First of all, let me say we were taken aback when the decision was rendered by the Northern District Court in California because we had no idea of the number of people that were going to be affected by this until we had an avalanche of cables and anguished telephone calls from our Ambassadors abroad, particularly in the industrialized countries. The situation now is that the court and, I think, the Department of Justice, that I have Mr. Rudy Henderson, who has been following this with the legal advisory staff, can come up here and give you the details, that it will be confined to the bricklayers and to the allied craftsmen of that particular union.

Mr. MAZZOLI. So, it is not going to spread beyond that.

Now, is this a Supreme Court—this was a district court case, you say?

Ms. CLARK. A district court case—

Mr. MAZZOLI. Is it being appealed at all—

Ms. CLARK [continuing]. That it will not—that it will limit it to that particular group.

Mr. MAZZOLI. Is that pending the appeal, or is it being appealed at all?

Mr. SCULLY. If I may, Mr. Chairman.

Mr. MAZZOLI. Yes.

Mr. SCULLY. The *Bricklayers II* case in California, that was adverse decision—

Mr. MAZZOLI. I understand.

Mr. SCULLY [continuing]. A ruling that this whole scheme of admitting the service, and repair, and installation technicians as business visitors was illegal, and an injunction against future admissions of B-1 nonimmigrants for that purpose.

The ninth circuit has stayed that injunction pending appeal, except as to—

Mr. MAZZOLI. Just that narrow—

Mr. SCULLY. That's right.

Now, notices of appeal have been filed, and an appeal may be taken. Consideration is also being given to the possibility of settling the case along the lines of the modified stay. That decision has not yet been made. Either there will be a settlement or, alternatively, the case will be appealed.

The question of which way to go is currently under consideration within the Departments of State and Justice.

Mr. MAZZOLI. Currently are people, though, since the ninth circuit has stayed the effectiveness of this injunction except for the limited target, being able—

Mr. SCULLY. Indeed.

Mr. MAZZOLI [continuing]. To travel—

Mr. SCULLY. Once we became aware of the magnitude of this issue and the impact it was having not only on major corporations here but on our trading partners in the industrialized West, we made a particular effort to poll our Embassies in the affected countries. And it is very clear from the responses we are getting that this modified stay in its current form has basically resolved the issue, as far as trade patterns are concerned.

Mr. MAZZOLI. To shift for just a moment to the treaty investors, investors as a category under the preference system have just

about been closed out from the late 1970's or early 1980's. Do you think that—and maybe I would ask for later comments on this, too, Madam Ambassador. Do you think there ought to be some redefinition so that investors might be able to come in under an E visa? Of course, that would be a nonimmigrant visa, but still to let them come in for lengths of time in order to qualify as they would have qualified under the current preference system?

Ms. CLARK. That is always a possibility. As I understand it, there has been legislation introduced from time to time to have an investment preference category. So far, it has not gotten through the Congress.

Mr. MAZZOLI. Let me ask you, of the 39—is there ever any effort to expand the number of the countries with which we have treaties now? Should the E visa be extended to encompass investors who do not come from countries with treaties that are in existence with the United States?

Ms. CLARK. That, I think, we would really need the views of our economic bureau on.

Mr. SCULLY. If I may, Ms. Clark, the traditional mechanism for according treaty trader and investor status are what is known as treaties of commerce and navigation, or friendship, commerce and navigation. We use the acronym FCN treaties. None of these over-all treaties of this kind has been negotiated since 1966.

Mr. MAZZOLI. Since 1966?

Mr. SCULLY. That's correct.

Now, at the current time the Government is negotiating various bilateral investment treaties with individual countries. It is not clear whether any of those treaties will include the type of provision that would authorize treaty investor status. I suppose in individual cases perhaps such an agreement might be reached.

It could turn out that in the future there would be other treaty instruments that would produce the treaty investor class. That is not clear to us at this point.

Mr. MAZZOLI. One last question about the E visa, as my notes indicate, the E visa has thus far been limited to commerce and trade, not to the transfer of knowledge or the rendering of service. Should that definition, or do you see any need to change it? Would you address that question if you do send up some recommendations about the whole range of these visas? I would appreciate it if you would—

Mr. SCULLY. That issue has been discussed, Mr. Chairman. We haven't really reached any conclusion on it. It is going to be an issue that I think we are going to have to face up to squarely. Trade now is defined as tangible and nontangible goods. By nontangible, I mean things such as insurance policies and those kinds of things. Although they are represented by pieces of paper, they are essentially nontangible goods.

The question is whether trade in brain power or skilled knowledge can be comprehended within it. The question is one that we have had under discussion with the Immigration Service. We really haven't reached a meeting of the minds on it. But it clearly is one that impends because in this high tech world that kind of—

Mr. MAZZOLI. A lot of—

Mr. SCULLY [continuing]. Trade is becoming more common, yes.

Mr. MAZZOLI. Probably more than the trade of tangible or even maybe intangible.

One very quick question on the H-1 visa, which is for persons of distinguished merit and ability, according to my data some 35,000 entered in 1983. I just wonder, that seems like an awful lot of people with the distinguished merit, and talent, and ability, and so forth that you would normally associate with that definition. Am I wrong? Is it being stretched? Or is that really a pretty narrow definition of merit and ability of a distinguished nature?

Mr. Penner, if you wish.

Mr. PENNER. I would only suggest that, since the H petition is one that is originally filed with the Immigration Service, they are the ones who more or less—

Mr. MAZZOLI. They make the determination more than you do?

Mr. PENNER. But we are dealing in a situation of not just musicians. We are dealing in all types of individuals in all categories of employment. So, 35,000 may not in fact be a large number when you consider this kind of situation.

Mr. MAZZOLI. Staff is requesting some information on this. It deals with Canada and whether or not Canada is still pressing for a bilateral immigration treaty which would facilitate the entry of nonimmigrants of certain business people as temporary workers, entertainers.

Ms. CLARK. They are still pressing on that particular matter of the entertainers, which we have discussed with the INS. We have resolved the problem of the bus drivers, which they also had a problem with.

Mr. MAZZOLI. I remember hearing something about the busdriver case. This is an allied kind of a question. Is that the idea?

Ms. CLARK. I think there is a 50-mile limit, as I recall, in which the entertainers are permitted to go back and forth freely without having to get the approval.

Mr. MAZZOLI. If they came further in the country, they would have to somehow fit under the distinguished merit or something, H-1, and some of them don't because they are routine singers.

There is another area here, too, the L visas, intracompany transfers. I am advised that the L visas have increased from 9,000 to 15,000 from 1979 to 1983. It is obviously being used a lot more. I wonder, does anybody have any observation on whether it is being abused, or whether it is fitting a category, or whether in the effort of the individuals to enter the country, they are just kind of grabbing up a category and seeking to have the legal papers developed to fit the category?

Ms. CLARK. That is again a decision really of the INS with the petitions.

Mr. PENNER. Obviously, Mr. Chairman, if I could add, it seems to fit a category. It certainly is reflective of the levels of trade and commerce that have now come up.

We have not heard of any widespread misuse or abuse.

Mr. MAZZOLI. Let me ask you, to show you my lack of knowledge, you mentioned that the L visa and also the H-1, you suggest that the INS does those visas—how is that different? I mean, doesn't your officer at the post issue a visa? Would they issue it on information supplied by the Immigration Service?

Mr. PENNER. That's right. H and L visas are only issued upon receipt of a petition, an approved petition, from the Immigration Service. And it is on the basis of that—

Mr. MAZZOLI. In other words, they proffer to one of your people, that is they the applicant, proffers to you something which has already been approved by the immigration.

Mr. PENNER. It comes directly, in most cases, from the Immigration Service.

Mr. MAZZOLI. So in effect, you just carry out a routine, paper-work transfer? If the INS has said yes, this person qualifies for an L visa, or yes he or she qualifies for an H-1, you just sort of routinely carry out the duty?

Mr. PENNER. It is run through our—

Mr. MAZZOLI. Administer—

Mr. PENNER [continuing]. Lookout system, that's correct. It's—

Mr. MAZZOLI. It's kind of a ministerial function more so than a discretionary function?

Mr. PENNER. Yes; we certainly do, though, match the identities of the individuals and some question about their qualification, their status, but the petition itself is then processed routinely by the consular officer at the post abroad.

Mr. MAZZOLI. Do you need special training for this kind of thing? Is this something that a consular officer would have to do? Is this something that can be peddled to another branch of government?

Mr. SCULLY. Mr. Chairman, what is established through the petition is the entitlement to the classification of H-1 or L-1. Now, the alien still has to qualify in all respects to receive a visa, that is to say, he must not be excludable under 212a or, if he is, we have to determine whether or not to recommend a waiver of that. So, there is that basic admissibility screening process.

Our officers are also entitled, if discrepancies come up between what is recited in the petition and what the applicant may say, to return that petition to the Immigration Service for reconsideration. So, it's more than simply a ministerial act. But that—

Mr. MAZZOLI. But that decision can't be looked behind? I understand in most of your visa work you make the decision and that's it? In effect, there's no challenge or appeal of that? Is that the case with these which carry more or less a preliminary approval from the INS? Is that still the case?

Mr. SCULLY. That is correct. For example, Mr. Chairman, let's say you have an approved H-1 petition. The applicant appears. The consular officer determines that that alien is an intending immigrant, does not have a residence in a foreign country which he has no intention of abandoning, and denies the application on that basis.

That decision is no more reviewable than the same decision on a tourist visa application. They both stand on the same footing in terms of the legal basis and the right of review or lack of right of review.

Mr. MAZZOLI. One thing that behooves this committee is to take a look at some point in the whole preference system because some of the preferences for labor, third and sixth, investors, they have been oversubscribed. So, I have a little worry that some of these visa areas are being sort of exploited in order to allow people to

come in who heretofore would have come in, in one of the preference areas. As more and more of this commerce develops and there is the quick transportation that develops, and as multinational activities develop, I think we really have to look at it.

It could be that we need to go back, as we talked about, and have separate investor categories as Father Hesburgh had in his original plan for immigration reform of 4 or 5 years ago.

Ms. CLARK. We will be very glad to —

Mr. MAZZOLI. That would be useful. This has been an interesting discussion. Maybe you all can kind of crystallize your own thinking on this and maybe just kind of a general proposition of what might be done to clarify what we are doing in these various visa categories. Maybe some can be abandoned and new ones opened. Anything like that would help us as we sail into those uncharted waters.

Mr. SCULLY. Could I make one comment, Ms. Clark?

Mr. Chairman, could I make one comment?

Mr. MAZZOLI. Certainly.

Mr. SCULLY. I think one of the issues that your comments raise really is a question of how much should be incorporated into statute and how much should be left to regulation and case law interpretation. Now, I would only observe that the language of the treaty trader and treaty investor provisions is very general in character. That can pose a problem, but it can also create a benefit in that, if it's sufficiently general in character, it is susceptible of changing interpretations to track evolving patterns of trade and business activity, whereas if it becomes too specific in the statute, it freezes the statute as of a particular moment and doesn't allow for that evolutionary change.

Mr. MAZZOLI. Well, that's exactly —

Mr. SCULLY. So, one does have to be careful about that.

Mr. MAZZOLI. That's exactly the kind of thing we would like to have, to be sure that you don't paint yourself into a corner, at the same time, not to have language so obviously out of date, for example, and being mangled and distorted and pummelled in order to fit; and we don't want that either. But certainly flexibility is needed, but a certain amount of specificity wouldn't be probably all bad either. Just a quick look at these things, it just seems to me that they are kind of a big muddle. Depending on what you want, you could probably have some lawyer craft a situation where you would probably fit. You know, it wouldn't take a whole lot of imagination to get the right paper and documentations. And I could fit as a B-1 or fit as maybe an H-1.

I think it probably needs a little bit of looking. But I thank you all very much.

I probably didn't get to some questions which we may send down to you.

Ms. CLARK. Mr. Chairman, if I may, I would like Phyllis Bucsko of the Policy Coordination Staff to clarify and to correct a statement which we made on the missing Iran passports —

Mr. MAZZOLI. Certainly.

Ms. CLARK [continuing]. And steps we would like to take in the future.

Ms. BUCSKO. I think the ones you were talking about are the stolen passports.

Mr. MAZZOLI. I don't know what I was—I was asking a question on behalf of staff, to tell you the truth of the matter.

Ms. BUCSKO. The blank passports that were taken were impossible to track because the United States right now does not track passports by number. There has been a resistance to providing numbers and names and dates of birth. As part of the automation program that Ambassador Clark was talking about, we are working with the other agencies, the Customs people, and all the members of the Federal Users Group to begin to set up a lost and stolen passport system. As we can do it now, moving toward a systems interface, using possibly the Customs system as a switching. But the Vice President's counterterrorism group, the Congress itself, and a number of other groups, including the Department of Defense, have asked us to see what we can do about tracking.

It will not get to the point where, if you lost your passport, they would pick you up at the airport.

Mr. MAZZOLI. I understand.

Ms. BUCSKO. If you got another one, you would have another number.

Mr. MAZZOLI. Right. That is interesting. I appreciate your having fleshed that out for us.

Again we thank you very much for your help today and wish you good luck.

I would like to call our last panel. Mr. Austin Fragomen is chairman, board of directors of the American Council on International Personnel. Mr. Andre Rude is manager of personnel operations and administration of Hewlett-Packard in Palo Alto.

Gentlemen, welcome. It has obviously been a longer day for you all than maybe even for us, but if you feel it convenient to summarize your statements, and then I have got some questions here, it may be that you could address some of the things I was asking the panel about, these various visas. That I guess is your real concern, much more so than some of the earlier things we talked about.

Mr. Fragomen, welcome. It is good to see you again.

TESTIMONY OF AUSTIN T. FRAGOMEN, JR., CHAIRMAN, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL, INC., AND ANDRE RUDE, HEWLETT-PACKARD CO.

Mr. FRAGOMEN. Thank you very much.

First of all, I want to thank the committee for according me this opportunity to be present today. Of course, it is always a great pleasure—

Mr. MAZZOLI. To come back home.

Mr. FRAGOMEN [continuing]. To appear before this committee, since I served on the staff of the subcommittee at the outset of my legal career.

Mr. MAZZOLI. It is kind of like a return home, really.

Mr. FRAGOMEN. Absolutely. I enjoy it very much.

I was very interested in your comments. Rather than just summarizing or going through my statement, because it is lengthy—

Mr. MAZZOLI. It would be very helpful, because those are the things you are really here for. Your statements, of course, are not only a part of the record, but staff will be analyzing them for particular points that I might have overlooked.

I am just curious, because you are an attorney who represents clients. You are part of a trade group which represents a number of large employers who are moving people back and forth across borders, continents, in and out of countries. Hewlett-Packard, of course, is an eminent leader in the whole field of computer activities. You use people, engineers, students, and so forth. I would just like to hear from you, to what extent are these laws now archaic because they have been on the books for 30 or 40 years and they just don't accommodate the realities of today's economic and personnel times? That is what I am really interested in, because we hope to get to these subjects at some point.

Mr. FRAGOMEN. Maybe I will make a few comments and let you make a few?

Mr. MAZZOLI. Sure.

Mr. FRAGOMEN. Basically I feel that the law is very much in need of revision. I will limit myself to the nonimmigrant categories, rather than talk about the immigrant preferences, because I realize that the preference system doesn't really lend itself to an efficiency approach. Once you try to change any one preference group, you invite about 6 million people with divergent interests to present their views.

Mr. MAZZOLI. Things haven't changed from the time you were here, Austin.

Mr. FRAGOMEN. Absolutely not. Reforms for nonimmigrants are possibly manageable.

I do think there are a number of categories that need further definition because they are not responsive presently to the needs of business. I further think that the entire structure of the nonimmigrant section needs to be reviewed.

The nonimmigrant categories, as you well know, are exemptions, you might say, or exceptions to the normal rule that all persons coming to the United States intend to come here permanently and therefore should come to the United States as immigrants. And the whole concept behind it is that there are certain classes of persons who do not intend to come here permanently but only for some temporary purposes and then leave the country. Of course, this gloss, as it applies to the utilization of the visas for business, leads to some rather anomalous and almost silly results.

For instance, take the case of an applicant applying for an E visa who, say, is an executive of a major corporation. When asked how long he intends to remain in the United States, if his answer is, "I intend to remain in the United States forever," the visa would be denied because he doesn't have the requisite nonimmigrant intent. If, on the other hand, he were to reply that he intends to remain in the United States until he retires 20 years hence, and at that point he is going to depart from the United States, then that would be perfectly acceptable; and the E visa would be issued.

I would strongly suggest that the nonimmigrant intent issue is a major preoccupation of consular officers and the Immigration Serv-

ice. It is set forth in the statute. I really think, however, it is totally unnecessary.

I would strongly recommend that the subcommittee consider an approach that would limit in time the maximum duration a person could be in the United States on a particular temporary visa. If the person then applies for permanent residence because he intends to stay here permanently, so be it. If he doesn't, then he must leave. If he can't complete the process in time, he must leave.

I think the nonimmigrant intent issue is a very substantial problem, particularly for multinational corporations heavily involved in research and development who are dependent upon graduates of schools in the United States, many of whom are foreign nationals.

Mr. MAZZOLI. Austin, can I ask you this question? I certainly have a lot of interest in hearing you say that. But would we not open ourselves to a charge from people that, if you're rich, you can beat the long waiting lines that come in as an immigrant? You come in and you have a big boodle of money, and you get yourself into the country as a treaty trader or as a B-1 visitor. And you keep extending it for a period of time. Then pretty soon, you seek to adjust that status to one of permanent residency as an immigrant.

The argument continues that, if you're poor and you don't have that opportunity, you got to stand in line maybe forever and never come in if, you know, numbers don't come into the third and sixth category.

Is there any validity there, or do we just have to admit that, just like Canada has clearly acknowledged they want rich people, they want traders, they want investors, they want people from Hong Kong, and they bring them in? They have made that conscious national decision that that is the way to sort of enhance the economic situation in their country.

How do you see that? And I would ask you, Mr. Rude, too, to address that.

Mr. FRAGOMEN. I have never really understood the legitimacy of this issue. Basically, if we divide the law between immigrants and nonimmigrants, the way the law is structured right now, if you want to immigrate to the United States you have to be poor. You know, it's a liability if you're attempting to immigrate to the United States based upon investment—there is no category—or based upon job skills. Visa numbers are very limited in the third or sixth preference. Opportunities are limited, et cetera. If you compare the number of wealthy immigrants with the number of poor immigrants, if there are 270,000 immigrants per year not counting refugees, not counting immediate relatives, let's count all them. Let's say there are 500,000 a year. I suggest to you that anybody who is concerned about people buying their way into the United States merely has to look at the statistics. Virtually all immigrants are basically poor or from limited means.

So, I don't really think that it is a valid concern that rich persons are being given preference for immigration.

Second, I think there is too much attention on revision of the immigrant provisions as opposed to the nonimmigrant provisions. I don't see anything wrong with Congress having an investor category that permits someone who invests \$250,000 and employs Ameri-

cans to be here for an extended temporary period, without ever becoming a permanent resident. Not everybody wants to become a permanent resident.

Mr. MAZZOLI. Thank you.

Mr. RUDE.

Mr. RUDE. Mr. Chairman, the type of people we hire at Hewlett-Packard enable us to easily work within the existing visa system.

I support Mr. Fragomen's statement that more flexibility would be welcome in the nonimmigration visa area. But in general we use B, H, L, and J visas.

Mr. MAZZOLI. You use those visas with Hewlett?

Mr. RUDE. And they work very well for us. But one has to recognize that we employ a very special type of person.

Our policy is very strongly oriented toward the home country. We want to promote nationals in their country. And we don't promote bringing nationals into the United States. The only people we—

Mr. MAZZOLI. So, you try to get Americans where they are available and to be sure to promote them and recruit them.

You know, one of the arguments we had about the student, the foreign student section of our bill over the years—

Mr. RUDE. Exactly.

Mr. MAZZOLI [continuing]. Is that sometimes American engineering and high technology companies don't really do recruitment in the barrios and the inner cities as they could, and they'd rather rely upon Indians and Koreans and people from other countries. That isn't your company's position, though?

Mr. RUDE. I would like to mention the B-1 visa. We have had a little bit of difficulty at the Canadian border recently. I think this was mentioned before.

As far as the J-1 program, we have used it since 1979, and like it very much. It has worked very well for us—

Mr. MAZZOLI. The J visa program?

Mr. RUDE. Yes, the J-1.

Mr. MAZZOLI. For some reason my notes are—that's an exchange visitor, OK. The J is the exchange visitor.

Mr. RUDE. And this program has worked very well for us. We have been increasing the number of people on this program. I have one professional person administering it currently. She understands perfectly that one of that the responsibilities of her job is to keep this quality. We welcome review by the U.S. Information Agency. We have a very good relationship with them and like their program.

That is why in my testimony I mention that we would be very much interested in having an L-1 blanket visa similar to the J-1. However, as previously mentioned, the program's current set up is not very enticing to us.

Mr. MAZZOLI. If I am not mistaken, Mr. Rude, apparently you have people who are in Hewlett-Packard's employ or some of your foreign subsidiaries who come into the United States under the J category.

Mr. RUDE. Yes.

Mr. MAZZOLI. You find that that is working pretty well. But, as I look at these things quickly, it would seem like that kind of an ac-

AVAILABLE

tivity should fit under the L category, which would be an intracompany transfer. But obviously, the---

Mr. RUDE. It's---

Mr. MAZZOLI. Now, this would be something where the Immigration Service has to preliminarily approve. It's like the H-1. So apparently, they agree with you that this is a useful category.

Mr. RUDE. Yes; because the J-1 program has a category that recognizes special skill or specialized knowledge. We have only recently begun to transfer this type of person. We have people overseas who know more than we do in the software area, for example. And we need to bring them into the United States to train our people.

Mr. MAZZOLI. So, even though they are in your employ, they come in not as in your employ but because they have a specialized knowledge---

Mr. RUDE. Exactly.

Mr. MAZZOLI [continuing]. And some special talent which they are sharing with your company's employees. Basically, they are not going to go out and teach at schools, but they are going to be working within your company.

Mr. RUDE. Exactly. They can stay 3 years under this very narrow specialty and that's---

Mr. MAZZOLI. Let me ask Mr. Fragomen, because as an attorney, you have gotten people to come in under all these categories. Do you think that that is a sort of creative use of the J category? Or do you think it's the way attorneys ought to explore to the furthest reaches the use of these categories, if one is kind of redtape strewn, you can find one that isn't for a while? I mean---

Mr. FRAGOMEN. Do I think attorneys do that?

Mr. MAZZOLI. Well, I guess that's what you're paid to do, is to be creative.

Is that a creative use, do you think, of the J category?

Mr. FRAGOMEN. Well, the J is for an exchange visitor. Organizations such as ACIP as well as companies, I am sure, such as Hewlett-Packard have been approved by the USIA to bring persons to the United States for up to 18 months' practical training. It is a very fine line at what point someone receiving training and at what point he is rendering productive services. If he's rendering productive services, you should apply for an L visa. If he's receiving training, a J-1 is appropriate.

Mr. MAZZOLI. Have you found it in your practice, Mr. Fragomen, that attorneys are driven to some of these different categories because they find delays or paperwork snarls or insensitive bureaucrats who clog up these other uses? You know, it is possible that, given today's world and the shrinking globe and the increasing multinational status of many of our companies, that a bureaucrat at some position can be a real bottleneck. That may not have been true 10 or 15 years ago.

Do you think that bureaucracy is partly at fault, not just the definitional part of the law?

Mr. FRAGOMEN. Well, I think I brought that out in a few areas in my statement. There is little doubt in my mind that a more flexible or constructive attitude would obviate the need for legislation, at least with regard to some of these issues.

The problem, of course, is that—and I know you went through some lengthy hearings this morning. The problem is a great concern on the part of the Service with fraud and of the consular corps, to a somewhat lesser extent. Sometimes this enforcement attitude pervades the adjudications area. I think the individual adjudicators sometimes aren't really taking a practical enough view of the situation. You have a situation in which there is a very rigid review and a great effort to draw the lines as tightly as possible, as restrictively as possible.

I can remember the last major legislation in the nonimmigrant area was the L visa, when I had the pleasure of serving as an assistant counsel to this committee. I can still remember our discussions with the then chairman of the subcommittee, Michael Feighan, and with various representatives of business. The idea of enacting the L was to come up with a provision that would be liberally interpreted, broadly interpreted to facilitate the transfer of personnel. But if you actually look at the decisions of the Immigration Service interpreting the L, they certainly are headed in the opposite direction.

Mr. MAZZOLI. Just out of curiosity, would either one of you have any data or observation about what the experience has been with respect to fraud? I tend to agree with you. I think that there is a kind of suspicion that sort of pervades the whole handling of these applications, suspicion about the misuse of these for fraudulent purposes and probably a little bit of, maybe, institutional concern about whether this is being used to beat the game that a poorer person couldn't engage in because of the lack of money.

I would just wonder about your observation as to whether or not the people who act with respect to whether the State Department or the Immigration Service could, if they were perhaps a little less suspicious or a little less concerned with the enforcement, might find that these areas yield a good result and that, in fact, there hasn't been a fraudulent misuse of them.

Mr. RUDE. Mr. Chairman, as far as my experience is concerned, we have had no difficulties. We have a very responsive INS group in the bay area.

Mr. MAZZOLI. Good.

Mr. RUDE. They have never refused anything. We obviously do a good job, first of all, in screening. I have a highly trained staff and HP has established procedures which are contained in the personnel policy and guidelines.

We have made a special effort to build up a relationship with the INS office. They understand our problems and have been very responsive. We have not had any difficulties in the last 7 years.

Mr. MAZZOLI. Austin, let me ask you this question. Do you see any of these categories in your experience being used fraudulently as, in effect, immigration tools rather than nonimmigrant activities?

Mr. FRAGOMEN. Well, I think you have—I would have to, not to belabor the point, but I think you really have to answer that question on two different levels. In terms of what is commonly accepted in the community regarding interpretation of the law, major corporations are extremely scrupulous in their immigration applications and petitions. I have seen very, very few instances of fraud. Just

once or twice you might have an overzealous person in an organization who, for whatever reason, went on some mindless messianic direction to help somebody. But that's very rare.

What I am more concerned about, for instance, I opened my remarks by making a comment about nonimmigrant intent. If a major corporation were to go on a campus and they were to recruit a Ph.D. level, say, electrical engineer, as an example, and let's say that it's fairly widely acknowledged that all the universities in the United States graduate about 50 percent of the needs of industry on a Ph.D. level in computer science, electronics, engineering, et cetera, and of those students, half of them are foreign students. So, a corporation goes on campus. They recruit a foreign student. And they offer that foreign student as part of his acceptance of employment with them a commitment to undertake to obtain for him first an H-1 visa. Second, they will apply for permanent residence for him.

Now, that's generally accepted. I really have never seen a case denied because of preconceived agreement, or whatever. But in theory, in theory that shouldn't occur. But I suggest to you that it's this dysfunctional aspect of the law which is forcing "technical fraud," and very much needs to be revised for that reason.

Mr. MAZZOLI. Let me ask you this. One of the things that you say in your statement is about the L blanket. I guess the issue is sort of like companywide or something. You suggest that it could be employed more often and more efficiently if it were streamlined.

Would you have some recommendations on how that blanket L visa could be streamlined?

Mr. FRAGOMEN. I think the Service has—we have been discussing this matter with the Service probably for the last year. I think it was last May at our annual conference in Washington they announced that they were going to propose a rule soon that would amend the L blanket petition. They set forth how they planned on doing it. It was pretty consistent with our recommendation.

I have had innumerable conversations since then. This amended regulation has yet to appear as a notice of proposed rulemaking. I think if they just went ahead and did it, the problem would be solved. But I don't quite understand why they haven't.

Perhaps you could urge them to do that.

Mr. MAZZOLI. Yes; I was just going to say. We are trying to find efficiencies and trying to find how things operate.

Mr. Rude.

Mr. RUDE. Yes, Mr. Chairman, as we discussed before, multinationals have proven to be good participants in the program; we have shown professionalism, and have not abused the visa system. They do the job for us. That is why we can be given more responsibility in honoring the L-1 blanket.

I don't see any problem with the U.S. Information Agency being our contact. I would welcome, as a matter of fact, review and audit on a yearly basis or a report to make sure that the program is not being abused.

Mr. MAZZOLI. Just out of curiosity, did your recommendation to the Service include that you would not have to make individual applications, just make it overall? And then individuals who fit within the definition would then just be granted a visa just routine-

ly? Or that the company would have the visa and it would sort of delegate that visa to the individual?

Mr. FRAGOMEN. It would run very much like the J Program except that, instead of being administered by the USIA, it would be administered by the Immigration Service. You would apply for blanket petition approval to the district office of the Immigration Service where your headquarters is located. Then basically they would authorize you, the company, that is, an authorized representative of the company, to issue a document to any person who is seeking to transfer to the United States. That person would go into a consul and apply for the L visa together with the document. He would have a letter explaining his position in the company, et cetera.

That is the idea behind it.

Mr. MAZZOLI. I see.

Is that currently how Hewlett-Packard works with the J? Is there such a thing as a blanket—

Mr. RUDE. Yes; we have a blanket with the USIA. I am not sure how it would work with—

Mr. FRAGOMEN. The concept is basically the same.

Mr. RUDE. I think—

Mr. MAZZOLI. It saves a lot of time and trouble. You don't have all that individual paperwork. I guess it is done once essentially.

Is it audited or reviewed afterward? Is that your proposal? So, if some company fails to perform correctly or people don't go back home when they should—

Mr. FRAGOMEN. Just like on the J visa, they can require some sort of reporting, quarterly or semiannually or whatever. But it would also save the Service a lot of money. They are very concerned about money, yet they don't go forth with something like this. Probably of the 15,000 or so L visas issued per year, half of them would be issued to major companies and would be encompassed by L blanket petitions. So, they would save probably as many as 6,000 or 7,000 individual adjudications.

Mr. MAZZOLI. How many?

Mr. FRAGOMEN. I would say 6,000 or 7,000. If they take 15 minutes or a half hour of administrative time plus adjudications time per case, they would save themselves an enormous amount of time.

Mr. MAZZOLI. Mr. Rude, how long can a person stay in the United States under the J visa without seeking some adjustment?

Mr. RUDE. The person can stay 12 months with the possibility of an additional 6-month extension.

Mr. MAZZOLI. Twelve plus six—

Mr. RUDE. With the special category, skilled knowledge, one can stay for 3 years.

Mr. MAZZOLI. For 3 years?

Mr. RUDE. Yes.

Mr. MAZZOLI. How did you propose your L to work if it were to be done by blanket?

Mr. FRAGOMEN. The maximum under the Service's proposals for regulations, the maximum period a person can have on an L visa is 5 years. That would not change.

Mr. MAZZOLI. That would not change.

Mr. RUDE. One thing which might be nice, if we could extend the J-1 Program. I think you mentioned it. Our typical training is usually 1½ to 2 years.

Mr. MAZZOLI. About 1½ or 2 years.

Mr. RUDE. So, now we can go all the way to 18 months. Two years would be really nice. It is not a big deviation but it would avoid—

Mr. MAZZOLI. I appreciate very much both of you gentlemen and particularly waiting. It has been a long day for you all. We appreciate it.

There are some questions that I was unable to get to today. What we would appreciate, and, Austin, you have done this more times than you can recall, to submit them to you; and maybe you could perhaps dictate a few thoughts or something and return your ideas.

Your statement is going to be the major part of what we need. It identifies most of the areas that we have some necessity to inquire into.

The same to you, Mr. Rude. We may well send you a question or two for further amplification. It may be that something that came up in some of our earlier panels may not have been dealt with in your statement. We would perhaps ask for some observations on that.

Mr. MAZZOLI. It has been very helpful. We appreciate it.

Of course, our effort is to try to improve the best of the business opportunities that we can offer both to our companies here in the United States and those that have activities around the world.

We appreciate your help. We thank you for your testimony. We wish you a happy and safe trip back home.

Mr. RUDE. Thank you, Mr. Chairman.

Mr. MAZZOLI. The hearing is adjourned.

[Statements of Austin Fragomen and Andre Rude follow:]

**STATEMENT
OF
AUSTIN T. FRAGOMEN, JR.
CHAIRMAN
AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL, INC.**

Mr. Chairman and Members of the Committee:

My name is Austin T. Fragomen, Jr., and I am pleased to appear before you in my capacity as Chairman of the Board of Directors of the American Council on International Personnel, Inc. (ACIP). Our organization is comprised of over 160 multinational corporations and institutions with a vital interest in facilitating the movement of international personnel across national borders. We believe that the interest of the business community in this respect is consonant with the national interest, since the nation's ability to compete effectively in the sphere of international trade and commerce is directly affected by the facility with which international business personnel can enter and remain in the United States for legitimate business purposes. ACIP is pleased to be asked again to appear before this committee to present the views of our members on matters relating to the issuance of visas to nonimmigrant aliens with a legitimate need to enter the United States.

Regarding the nonimmigrant visa categories that are frequently used by the business community a number of issues of interpretation have arisen in recent years. In some cases, hypertechnical readings of the statutory language defining these categories have led to a divergence between the original congressional intent in their adoption and the administrative strictures currently placed on their use. Thus, for example, while the legislative history surrounding the enactment of the L visa category for intracompany transferees makes clear that Congress intended this category to permit easy international transfer of personnel within an economically-related, multinational business entity, some companies find themselves unable to make transfers when they cannot meet rigid INS definitions of affiliation between branches of their multinational organizations.

Other nonimmigrant categories have proved to be needlessly complex, often providing employers with several narrowly defined choices within which to qualify an alien employee, none of which fit precisely the alien's circumstances or the employer's needs. For example, the Immigration and Nationality Act currently contains three separate nonimmigrant categories through which an employer may provide business training to an alien. Each has requirements that are so narrow, however, that employers are often forced to place artificial time limits on periods of training or create detailed training programs akin to formal educational programs; employers often avoid the training categories altogether if they are able to classify the trainee as a professional for purposes of using the H-1 nonimmigrant category reserved for persons of distinguished merit and ability. While technically many trainees can be classified as professionals, according them H-1 status is illustrative of the manipulation of the nonimmigrant visa categories that must occur in order to make these categories fit the reality of the business world.

Finally, the present system is lacking completely in classifications to cover some groups of business personnel with legitimate reasons to enter the United States on a temporary basis. For example, persons who seek to enter the United States to oversee major investments made by them in this country may find that they cannot do so under any of the existing nonimmigrant categories. If the alien derives income from the investment, the B-1 business visitor category might be inappropriate under established INS precedent. If the investment enterprise is not affiliated with a foreign company that has been in existence for at least one year, the L-1 intracompany transferee category would also be inappropriate. If the investor does not have professional-level credentials, the H-1 visa category

would be unavailable, and if the alien is not a national of a country with which the United States has a treaty of commerce and navigation, the E category would also be unavailable. This deficiency in the present system, which is clearly an impediment to international commerce and a detriment to the U.S. economy, is only one of several failings in the present system which I intend to detail in this presentation.

While I believe that the changes to the present system that I will suggest would be beneficial under any circumstances, I must emphasize that many of these changes have become imperative only because of the interpretation placed on the current statutory provisions by the administrative agencies charged with administering these provisions, particularly the Immigration and Naturalization Service. The INS, through its Administrative Appeals Unit, has adopted interpretations in the past few years that are often at variance with longstanding past practice and policy, and that are often out of touch with the real circumstances prevailing in the business world. These interpretations are often hyper-technical, without regard to underlying policy considerations, as enunciated in the legislative history. They also fail to take into account the national interest, particularly in a free flow of international commerce and trade which benefits the U.S. and world economy. Fine lines are being drawn regarding terms or concepts in the Act that have no clear policy rationale other than to take the most cribbed view of the language that will succeed in keeping out of the United States the most aliens, regardless of the benefits to the nation of their admission and the legitimacy of their purposes for seeking entry. Few legislative changes to the present structure of nonimmigrant visas would be required if the law in its present form was given a practical

interpretation consonant with policy considerations furthering the national interest.

The L Visa Category for Intracompany Transferees

A perfect example of my point is the L nonimmigrant visa category for intracompany transferees. Congress adopted the L visa category in 1970, after a full discussion and debate on the need for such a category. The legislative history relating to this category clearly indicates the intention of Congress to provide a mechanism through which personnel of multinational companies can be transferred easily within the international organization of a company. The category accords recognition to the method of operation of multinational companies, which often shift personnel based on need or through regular rotations, in order to assure uniform business practices throughout the company, to provide key employees with experience in many branches of the organization, and to place the best possible people in crucial management or executive positions where ever the need exists within the international organization.

To effectuate this policy, Congress included in the statutory definition of the L nonimmigrant category the concept of affiliation -- transfers of personnel into the United States are permissible when the employee is moving between two affiliated entities within the same corporate structure. As a further requirement, the employee must have worked with the overseas affiliate for at least one year prior to transfer. The affiliation concept has been the subject of a great deal of interpretation by the INS. While originally taking a rigid view of affiliation to require majority ownership of the two affiliated entities by a common owner, the INS in recent years has adopted the concept of "effective

control". If one company has effective control over another, or two companies are effectively controlled by a third company or by an individual or group of individuals, affiliation is present for intracompany transferee purposes. INS precedents make clear that effective control can arise when enough stock ownership is present to assure management of the affairs of the company; in large companies, even 10% stock ownership is sufficient to assure effective control.

While the concept of effective control has led to a more realistic application of the criteria for classification of an alien in the L nonimmigrant visa category, ACIP remains unconvinced that any approach that focuses on a technical definition of affiliation truly effectuates the original congressional intent in enacting the L classification. It is ACIP's view that affiliation must be understood to cover any legitimate business interest justifying the transfer of personnel. The focus in this inquiry should not be on one word, and its meaning in such unrelated areas as securities law, but rather on whether there is a legitimate business and substantial economic interest justifying related companies in transferring personnel between them. Several examples will illustrate the type of legitimate business interest that is currently excluded from justifying international transfers under the present effective control standard.

The INS case that established the effective control principle involved a joint venture company, in which stock ownership is split evenly between the two parent companies. The decision emphasized that such a company could qualify as part of the international organization of one of its parents only if that parent effectively controls the company's management through naming the executive officers, control of a majority on the Board of Directors or other indicia of de facto control.

In fact, many joint ventures operate strictly on an even split in both stock ownership and actual voice in management. Some of the ventures undertaken by U.S. and Japanese auto makers are ready illustrations. In these cases, a free exchange of management and technical personnel between the parents and the joint venture enterprise is often not only desirable but absolutely essential to the success of the joint venture. Both parties are often sensitive to the issues of effective control and ownership, yet each has a legitimate interest in the success of the enterprise and the operation of the company. Neither party would likely enter into the venture if it was not capable of providing oversight and expertise through the use of tested personnel from its own operations. In the case of the Japanese-U.S. joint ventures, a recent change in State Department regulations now permits classification of transferring personnel as treaty investors under the E nonimmigrant visa category. For joint ventures involving companies located in non-treaty countries, however, this option is not available.

These joint venture companies, which are an integral part of the international organization of each parent, are an economic boon to the United States economy as well. The transfer of personnel from either parent to the joint venture enterprise fits easily within the legislative intent to facilitate the movement of international personnel for the benefit of the U.S. economy. ACIP sees little basis for concern regarding abuse of the L category through its extension in this form. Since joint ventures are more clearly documented in terms of extent of control than are situations in which a minority shareholder has effective control, INS evaluation of the bona fides of a petition based on a joint venture operation should be straightforward.

Variations on the joint-venture theme include situations in which one venturer in an enterprise holds a majority of shares based on foreign stock ownership requirements. It is not unusual for the laws of some foreign states to require that companies formed under those laws be majority-owned by nationals of the foreign state. Nevertheless, the company may represent a major investment by a U.S. company and be a significant part of the company's world-wide organization. In a further variation of this type of situation, a number of companies may join together to form a "joint venture"-type company, the best-known example being Aramco, in which a number of U.S. oil companies have minority interests together with the government of Saudi Arabia. Again, these companies are clearly affiliated with their parent-owners in a significant way -- financial commitment, assignment of management personnel, share of profits -- and should legitimately be considered a part of the world-wide organization of each parent for intracompany transfer purposes.

Other examples of business entities with a legitimate business interest justifying the transfer of personnel are international accounting firms. These firms, including the "Big Eight" U.S. firms, usually operate as partnerships, with each office owned by the local partners. The policies of all offices are governed by an umbrella organization, usually a board consisting of representatives of the various partnerships. The local offices must abide by the policies of the board. Offices of the major accounting firms often transfer personnel, indicating the close connection between the offices. Yet, they are not affiliated under the effective control standard, since the ownership structure of the individual offices is not interrelated. These firms are therefore barred from use of the L category, although they

are some of the most likely users of this category based on their need to transfer personnel on an international basis.

The point is that a definition of affiliation that is too rigid, even one which relies on "effective control," is unrealistic in the modern business world and significantly limits the operation of bona fide multinational organizations without discernibly benefitting the United States in terms of control over the entry of foreign nationals. In fact, a rigid definition of affiliation undoubtedly is a detriment to the United States, by placing limits on international commerce and trade that ultimately hurt the U.S. economy. An amendment to the L nonimmigrant visa provision or the Act's definitional section to provide a realistic definition of affiliation for purposes of intracompany transfers would remove the present impediment to international commerce, effectuate the original purpose of Congress, and have little if any impact on enforcement or abuse of the immigration laws. This new definition should focus on a "legitimate business and substantial economic interest" rather than on "effective control."

Nonimmigrant Investors and the E Nonimmigrant Visa Category

One possible explanation for a restrictive INS interpretation of the criteria for classification in the L nonimmigrant visa category is that the clear statutory language undoubtedly sweeps into its ambit small investors as well as major multinational corporations. The INS has been disturbed by the use of the L category by small investors, but has been unable to prevent such use since small investors can often establish affiliation between a foreign and U.S. company, the requisite period of foreign employment, and the transfer of themselves from one managerial or executive capacity to another. Unlike the E nonimmigrant visa category, which requires a

"substantial" investment in order for aliens engaged in the investment enterprise to obtain nonimmigrant classification, an investor seeking nonimmigrant status through the L category need make no minimum investment, and often needs to do little more than rent office space in the United States and commence operations. For an import-export firm, the total initial investment might be a few thousand dollars.

In part to maintain rigorous control over the use of the L category by investors, INS has imposed strict interpretations on the L criteria. A better solution, which would avoid the abuse of the L category perceived by the INS while not impeding legitimate international commerce and trade, is to provide a separate nonimmigrant category for investors that would assure control over the quality and significance of such investments. Currently, nonimmigrant status is provided in the E nonimmigrant visa category only to investors who are nationals of countries with which the United States has a treaty of commerce and navigation providing for special status to investors of each country in the other. Since these treaties are only in existence with approximately thirty countries, nationals from other countries who want to invest in the United States often find that they are unable to remain in this country to oversee their investments, as I have previously discussed.

A suitable supplement to the present E nonimmigrant category, then, would be a new nonimmigrant category permitting nonimmigrant status to those aliens who need to enter the United States to oversee a significant investment in this country. Specific statutory guidelines could be modeled, to great advantage, after the proposal incorporated in the original Simpson-Mazzoli Bill for a preference category for investors within the immigration selection system. That proposal required a qualifying investment of at least \$250,000 and the employment of a minimum number of U.S. workers. A

nonimmigrant category for persons investing on this scale and providing employment to U.S. workers is a clear benefit to the U.S. economy which, when combined with proper limitations on the current use of the L nonimmigrant category, will promote clarity in the law and prevent abusive use of the L category by small-scale or even fraudulent investors. Setting a minimum investment figure of \$250,000, which is substantially higher than the current de facto standard of \$100,000 used for the E nonimmigrant visa category, would continue to recognize the special treatment given to nationals of treaty countries under the present Act. Consular and INS experience in monitoring the new category and assuring compliance with its terms would require no additional expertise over what is now required to assess to the bona fides of investments under the E nonimmigrant visa category. There are many advantages and no obvious disadvantages to an addition of this type to the nonimmigrant visa system.

The current investor and trader provision, like the provision for intracompany transfers, is also being interpreted rigidly in some respects, without regard to the realistic operation of the business world. Two terms in particular have been defined in a highly technical manner to place needless restriction on the flow of international trade and commerce. The concept of trade has been defined by the government to exclude technology transfer, even though such transfer probably constitutes the fastest-growing component of international trade at this time. The government rationale is that there is no tangible commodity that is being traded in a technology transfer. Yet, the government has defined such activities as insurance and banking as involving trade; in these cases, the government has been able to locate a tangible commodity, the "paper" that is the end result of the transaction. I submit that the distinction between the paper in a

banking transaction and a technology transfer is an artificial one that serves no purpose other than to impede legitimate trade between treaty countries by restricting the ease with which employees of the trading companies can enter the United States. The fine lines discerned by the government between banking and insurance on the one hand and technology transfer on the other could be eliminated by a sensible reading of the statute; short of this result, however, congressional action would be useful to assure that the treaty provisions are kept up-to-date with changing trends in international trade.

Another requirement of the E nonimmigrant category that is currently being given a confusing reading is with regard to the types of personnel who may enter the United States as treaty aliens. In addition to executives and managers of the treaty enterprise, persons with essential skills or special knowledge of the enterprise's product or processes may be brought into the United States in E status. These key employees parallel directly the provision for employees with specialized knowledge in the L nonimmigrant category. Yet, the L provision and the E provision are not given uniform interpretation by the government agencies, thereby confusing the companies making use of both categories. There is no sound basis for a divergence in interpretation between these two categories; again, this matter could be adequately handled by administrative interpretation, particularly since the inclusion of essential skills personnel in the E category is effectuated by administrative regulation. Since the government persists in giving interpretations of these provisions at variance with one another, however, congressional action to make the provisions for specialized knowledge employees uniform under the E and L provisions is desirable.

The H-1 Nonimmigrant Category for Professionals

No area in the past few years has resulted in greater problems in administrative interpretation of nonimmigrant categories than the H-1 visa category. Restrictive interpretations by the INS Administrative Appeals Unit have come in three areas, with the result that business has been impeded in obtaining the temporary services of the most highly qualified personnel, a situation with the potential of placing U.S. business at a competitive disadvantage to foreign-based firms. First, the INS has sought to define a "professional" for purposes of classification in the H-1 category in an inflexible manner to rule out persons with extensive employment experience which is often more valuable than educational experience in imparting professional skills and knowledge to personnel. Second, the INS has taken an unrealistic view of the requirement that an H-1 employee's services be sought temporarily, particularly in instances in which the company may also have long-term plans to use the employee's services permanently as well. A third offensive against use of the H-1 category involved the imposition of artificial licensing requirements for persons in occupations for which a license is available but not required in to practice (e.g., architects and accountants); this last issue has for the moment been resolved by INS acceptance of H-1 classification for non-licensed professionals filling positions for which a license is not required.

INS interpretation of whether a person is a professional for H-1 purposes indicates a clear need for a more precise definition of this term in the Act. The Act, as written, does not specifically include professionals in the H-1 category, instead identifying those persons covered by that category as persons possessing distinguished merit and ability in their field. Only through administrative case law has the principle developed that a member

of the professions is per se a person of distinguished merit and ability. The current standard, as developed through INS cases, is that a person is a professional if he has attained a baccalaureate degree or its equivalent in a field which requires such a degree for entry; some fields, such as law, obviously require a degree above the baccalaureate level. While the baccalaureate degree rule-of-thumb is useful for determine whether a particular field is professional, mere possession or lack of a baccalaureate degree is not nearly as indicative of whether a particular person has the credentials to practice in a professional field. While some fields such as law have clear requirements in terms of credentials, other fields do not, and aliens with a combination of education and experience may be quite suitable candidates to engage in professional duties. The INS for many years recognized the need to evaluate education and experience to determine the equivalence of credentials for aliens without a baccalaureate or higher-level degree. Recently, however, the INS has stated a much more rigid policy which permits reference to a person's experience only in rare cases; otherwise the relevant degree must have been conferred in order for a person to be considered a professional.

The problem with this position for the business community is that it is not always easy to determine whether a degree is required for a particular position, and if so, what kind of degree is appropriate. Further, business professionals with many years of experience may rise to the top ranks of major corporations without having obtained a professional degree at all, or without having completed all of the requirements for such a degree. Application of common sense, however, should indicate that these persons are undoubtedly employees entitled to consideration as persons of distinguished merit and ability.

As an example, a Chief Operating Officer for a major corporation may have twenty or thirty years of relevant experience but only a liberal arts degree in college. Does the position of Chief Operating Officer always require a degree? If so, which one and with what major (the INS recently denied H-1 classification to the holder of an M.B.A. degree because his major was not in the most highly relevant part of the business field, e.g., marketing instead of finance)? Finally, does the alien have the credentials to qualify him to perform the professional-level duties required by the position?

If these questions are answered with a view to business realities, the alien would clearly be considered a person of distinguished merit and ability; yet, under INS standards this result is unlikely. A definition of distinguished merit and ability for purposes of the H-1 category should recognize that a person qualifies as such if his experience and/or education equip him to perform the functions of a position classifiable as a profession, but also high-level business positions that are less easy to classify as professional. Whether a position is classifiable as a profession and whether the alien has the credentials necessary to fill the position are both determinations susceptible to analysis and decision. To assure that top-level business executives are not excluded from consideration, however, the definition of H-1 coverage should include not only professionals, defined to include persons with the equivalent of professional credentials, but also high-level business executives. To assure that this provision would not be used by small companies to bring in "executives" who are essentially investors and do not need to possess distinguished merit and ability to perform their duties, ACIP advocates limiting the latter provision to high-level executives of multinational corporations. This limitation is fair as a

rule-of-thumb indicating the amount of responsibility and skill required to perform the duties involved; only in such major multinational corporations can the duties of high-level executives be considered to require distinguished merit and ability. Clarification of the statutory definition of a professional and, more generally, distinguished merit and ability, would alleviate the government's unnecessarily restrictive approach to the H-1 issue.

The H-2 Nonimmigrant Visa Category for Temporary Workers

Unlike the current H-1 category, which permits aliens to enter the United States temporarily to fill permanent positions, the H-2 nonimmigrant visa category requires that aliens be coming to the United States temporarily to fill temporary positions. The INS has interpreted this requirement to mean that the employer's need for the skills which the alien possesses should be temporary. This interpretation has led to bizarre results. For example, the INS has held that the services of an alien chef can not be retained to train other chefs in a particular cooking style, if the alien chef will engage in any cooking or kitchen duties himself. The reason for this decision is that the employer has a permanent need for the skills possessed by a chef and therefore its need for the alien's skills are not temporary, thereby failing to qualify the alien in the H-2 category. Just how the restaurant is supposed to operate while the alien chef trains other persons in the desired cooking style is left unexplained; presumably if someone was available to fill the duties while the training was proceeding, the restaurant would have no need for the alien trainer.

This unrealistic result highlights the central problem with the H-2 category: its requirement that the position itself be temporary is not in

accord with business realities. It creates another instance of mental gymnastics, through which an employer that already employs persons with the alien's skills must show that it has a "peak-load" situation (one in which an unforeseen need has arisen for additional employees that is unlikely to reoccur).

ACIP advocates a change in the H-2 provisions as they relate to non-agricultural workers. A cleaner approach that would engender less cynicism for the legal requirements is one in which workers for whom the employer has a temporary need could be employed regardless of the "temporary" or "permanent" nature of the job to be filled. The key element of the H-2 provision should not be the temporariness of the job, but rather the availability of U.S. workers to fill the job. In fact, the availability of U.S. workers is now minimized by the temporariness requirement; when a job is defined as temporary it is likely to be far less appealing to U.S. workers.

Under a revised H-2 category which is not limited by the requirement that the position to be filled by the alien is temporary, the labor market could still be protected by a required Department of Labor certification regarding the availability of U.S. workers. The test of the labor market would assure that the employer is not seeking to rely on foreign labor when U.S. workers are available. With this assurance, there would seem to be few policy considerations that militate against the revision. In fact, an added advantage to a revised H-2 category is that an employer with a need to fill a permanent position is not compelled to seek permanent residence for an alien; it can obtain temporary status and thereby leave open the possibility that in the future U.S. workers will become available to fill the position. A new labor certification is currently required every year, thus assuring that U.S. workers are continually sought to take the alien's place.

Business Training for Aliens

Some of the most confusing portions of the current law's nonimmigrant categories are those dealing with training of aliens. An alien can receive business or industrial training in the J, F or H-3 nonimmigrant visa categories. The J nonimmigrant category, for persons qualified as exchange visitors through a government-approved exchange visitor program, provides for business and industrial training for up to eighteen months. The training can be on-the-job, but the maximum training period is usually too short to accommodate management training programs of most companies, with two-year programs being fairly standard. Additionally, employers must either apply to sponsor their own exchange visitor programs, which can be a complicated procedure, or must use the program of an umbrella organization, such as ACIP, which often contains further limiting restrictions. An alien student in the F-1 category can receive up to a year of practical training related to his academic program, but the employer must certify that the training is capable of completion within the one-year period, a major impediment. The student's school advisor must certify that similar training is not available in the alien's home country, a fact that is difficult to establish and therefore routinely stated even when the advisor and the student have no idea of the availability of equivalent training. The H-3 category is available for formal training programs and can be approved for the full length of the training program. The program cannot consist solely of on-the-job training, however, and the alien cannot engage in productive employment that would displace a U.S. worker. The latter requirement is often difficult to establish, and the bar for on-the-job training is inconsistent with the management training programs of many

companies that involve the rotation of trainees through the different divisions of the company, or the programs of professional services organizations that are grounded in on-the-job practice under strict supervision.

Companies are therefore left to choose among alternatives that are so circumscribed with limiting requirements that none of them closely fit the typical company's situation. The J exchange visitor category is the most useful to companies, because on-the-job training is permissible and no prior visa petition need be approved by the INS, but the time frame for training provided by this category is unrealistic. No loss in control or enforcement would be caused by providing for training for the documented length of a training program, as approved by the U.S. Information Agency in accepting an exchange visitor program. Short of this suggestion, extension of the maximum length of stay for industrial trainees to two or even three years would be desirable.

In addition to these changes in the J nonimmigrant visa category, an amendment to the requirements of the H-3 category is desirable to clarify that on-the-job training is permissible. The statute currently does not restrict on-the-job training, instead specifying that the employee cannot engage in productive employment. Unfortunately, the productive employment requirements has been applied by INS in an over-inclusive manner to bar almost any type of on-the-job training. A more appropriate rule-of-thumb to protect the U.S. labor market is whether the alien is filling a position that the employer would need filled if the alien was not in the position. This rule-of-thumb would establish whether the position filled by the alien is so integrated into the day-to-day operations of the employer that the placement of an alien in the position takes full-time employment away from

U.S. worker. Use of this rule-of-thumb, then, would satisfactorily distinguish between legitimate on-the-job training that is superfluous to the employer's required operations, and impermissible productive employment that takes jobs from U.S. workers. A redefinition or explanation of the productive employment requirement, to clarify that on-the-job training is permissible, would make the H-3 category a much more useful tool for businesses that need to train new employees prior to other assignments. Recent regulatory safeguards established by INS with regard to the length of the training program and the availability of extensions of training already provide some assurance against abuse of the H-3 provision. The employer should continue to be required to specify a detailed training program or training concept that gives the overall logic and purpose of the training. What the employer would not have to do under this change to the H-3 category is to concoct a detailed course roster and list of reading materials, parallel to an academic program, as is often currently required by the INS under the H-3 category.

The B-1 Business Visitor Nonimmigrant Visa Category

Congress has mandated that the B nonimmigrant visa category for tourists and business visitors not be used by aliens to engage in employment or study. In attempting to realistically apply this mandate to the myriad of situations not explicitly covered by the Act, the government over the years has developed a series of policy instructions that permit use of the B-1 business visitor category by persons who engage in activities that can only realistically be characterized as employment. For example, employees of airlines can enter the United States in the B-1 category to work here if they are qualified for E treaty alien status, except that they are not nationals of

a treaty country, or the airline is not located in a treaty country. Likewise, domestic servants of nonimmigrant aliens or of U.S. citizens who spend most of their time outside of the United States may enter the United States in B-1 status, even though during their period of stay here they will be paid a salary to engage in their employment services.

While ACIP understands the need for a liberal interpretation of the B-1 category in view of the limited alternatives for nonimmigrant entry under the present Act, this category has taken on the status of a "catch-all," used to cover any situation deemed a legitimate nonimmigrant situation, but for which no other nonimmigrant category applies. This practice, while understandable, is not desirable because it is another example of manipulation of the statutory provisions that may breed disrespect for the law.

There are undoubtedly any number of legitimate nonimmigrant purposes for entering the United States that are not covered by other nonimmigrant categories, and for which temporary entry to the United States should be permitted. One recent example that has drawn widespread attention is the entry pursuant to sales contracts of installation, maintenance and repair personnel to install or service equipment sold in the United States by foreign companies. In many of these cases, the sale would not likely have taken place if the U.S. purchaser was not assured that it would have access to expert technicians who can install and service the purchased equipment. The entry of such personnel was challenged in a particular instance in which the aliens may have engaged in work associated with the building trades (bricklaying and masonry) for which technical assistance from the seller was not necessary. While the issuance of visas to persons engaged in bricklaying activity most likely was unauthorized by the

policy instructions of the State Department, the use of B-1 visas even for bona fide installation or repair personnel raises thorny issues regarding the definition of employment.

This problem can be addressed in several ways. One method is to better define the B-1 category, so that it does not include a rather vague restriction on employment, but a more specific bar on receiving a salary from a U.S. source or filling a position that displaces a U.S. worker. The statutory language can also be amended to make clear that business entries under the B-1 category must be in furtherance of or pursuant to international trade and commerce.

Even with this type of change, it might be beneficial to include in the law a new nonimmigrant category that would permit the temporary entry into the United States of aliens with legitimate reasons for entry who do not fit within any of the other nonimmigrant classifications, including a new B-1 category redefined as just suggested. This category, which could be carefully defined by regulation to avoid arbitrary decisions, would encompass many of the current uses of the B-1 category that admittedly involve local employment without any relation to international trade or commerce.

The Temporariness Requirement for Nonimmigrant Categories

With regard to the temporariness requirement for the nonimmigrant visa categories, the INS has grappled over the past year with proposals for regulations that would set clear standards on this issue for the work-related categories. Under the proposals, as they have been publicly announced, temporary worker aliens (including H and L nonimmigrants) could remain in the United States up to five years without raising significant

issue about the temporariness of the employment relationship, absent any countervailing evidence on the intention of the parties. Commencement of a permanent residence case, in the form of the filing of a labor certification application, would not negate the intention of the employer and the employee to abide by the terms of the temporary employment during the period of validity of the authorized stay. As long as the employer and the employee intend to terminate the employment relationship even if the permanent residence papers are not yet approved at the end of the five-year period, the bona fides of their temporary intentions should not be subject to challenge.

These rules, if adopted by the INS, go a long way toward alleviating problems for the business community caused by a rigid and unrealistic application of the temporariness requirement for nonimmigrant temporary worker stays. Most businesses desire maximum flexibility in planning personnel needs. While advance planning is used when possible, very few businesses are able to do the advance planning that would be necessary to account for the one- to two-year waits required for processing a permanent residence case. The business community must have a mechanism through which it can obtain immediate access to required personnel on a temporary basis while awaiting final processing of a permanent residence case. As long as the employer and employee intend to abide by the terms of the temporary authorized stay and to terminate the relationship when the authorized stay and any extensions expire, technical compliance with the requirements of the H-1 category is possible; the INS proposal in this respect is realistic and salutary.

The problem with the INS approach, however, should be obvious. The "dual intent" doctrine is understandably difficult for lay persons to fathom,

because it is essentially an artificial means of addressing a real problem: the backlogs in immigrant visa availability and the bureaucratic delays in processing permanent residence papers. Explaining to a company or its alien employee how they can have both the intention to undertake a permanent employment relationship and the intention to currently engage in temporary employment in the same position can only engender in such lay listeners a cynicism about how the system of immigration laws operates.

A preferable approach to this problem, then, is a direct analysis of its nature and a solution that satisfies legitimate concerns about control of aliens in the United States and the needs of the business community to obtain the best possible talent in key positions. One solution would be to remove the temporariness requirement from the long-term temporary work categories while imposing a strict time limitation on the period during which an alien can remain in the United States in that category. Failure to obtain permanent residence during that time period would bar the person from remaining in the United States longer. Mental gymnastics regarding fine distinctions between temporary and permanent intent could be avoided, thereby avoiding disrespect for the legal procedures that require such gymnastics, while a clear guideline would permit the INS to screen out persons seeking to remain in the United States indefinitely while avoiding a test of the labor market for qualified U.S. workers. This restructuring of the H-1 category would be preferable to the INS approach, which still requires some review of the temporariness issue and leaves the door open for resurrected barriers to legitimate business employment relationships at some future time. The desired change would require amendment of Section 214(b) of the Act, to make clear that the temporariness requirement is

defined differently for long-term temporary workers, and for persons in the other nonimmigrant categories.

ACIP must note that the importance of the temporariness issue has been exacerbated in the last year by investigations being conducted by the INS and the Labor Department of attorneys and employers, investigations that have resulted in criminal indictments regarding affirmations pertaining to temporariness. I have already analyzed the flaws in the present statute that have led to the torturous "dual intent" concept; I believe it is particularly unfair to subject to investigation and criminal indictment those persons who are attempting to operate with such a difficult concept. Until a reasonable change in the statute can be made to obviate the need to rely on the sophistry of "dual intent," ACIP strongly advocates a cessation in the investigation and harassment of employers and their representatives who are seeking to comply with the law while meeting their legitimate needs for the transfer of personnel to the United States.

Conclusion

ACIP endorses any effort by this committee to review the present nonimmigrant visa structure to bring the current criteria for admission into line with business realities. As I have attempted to illustrate throughout this presentation, many portions of the current law have required convoluted interpretations in order to maintain their viability in today's world. While the result has been a system that manages to creak forward, the price has been a growing cynicism about the nature of legal requirements and the methods available to circumvent them. In any society founded on law, this price is a high one. Congressional action to relieve

some of the tensions that have developed in the nonimmigrant system would therefore be a worthwhile endeavor.

It is sad to say that some of the changes that ACIP recommends would be unnecessary if statutory provisions phrased with adequate flexibility were not given hyper-technical or unrealistic interpretations by the INS, and particularly by its Administrative Appeals Unit. The question is whether the government is looking to find what is wrong in employer petitions or what is right, whether it is seeking to contract or expand its interpretation, and with reference to what policy considerations. ACIP is aware of the INS concern with fraud in the submission of petitions and applications for nonimmigrant benefits; rigid statutory interpretations, however, are no substitute for logical and reasonable adjudication procedures that are best-suited to ferreting out fraud. Clarification of terminology in the Act to assure that the national interest underlies INS policy should not be an action that Congress needs to take. It is one that has become inevitable, however, in view of rigid application of policies that serve as more of a brake on international commerce and trade than on fraud.

I am sorry to report to you today that the business community feels a growing resentment that, with millions of undocumented aliens flooding the country, it has become the focus of INS requirements and investigations that impede its efforts to expand U.S. economic efforts. The business community is the largest single consumer of immigration-related services, and its interests are fundamentally in harmony with those of the government in assuring an orderly flow of aliens into the United States consonant with the needs of international trade and commerce. Businesses do not seek benefits for aliens because they enjoy subjecting themselves to the immigration-related bureaucracy. They employ aliens and seek their

admission to the United States because, despite the high cost to the companies for each alien, their employment is a necessity. In order for U.S. business to be competitive in the world market place, it must have personnel stationed abroad who are familiar both with the company's U.S. business practices and local cultures, and it must have personnel in the U.S. and abroad who are the best technical and professional people available, regardless of their country of nationality. It is only to assure continued competitiveness in international trade and commerce that U.S. businesses make use of immigration-related services. Use of those services should not be a hassle to U.S. businesses. To the extent that their use is a hassle, changes must be made. I have attempted to suggest today those changes that would be most beneficial.

Thank you for the opportunity to set forth the views of ACIP's members on the steps necessary to assure encouragement of economic development.

TESTIMONY BEFORE
HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON IMMIGRATION
WASHINGTON, D.C. - MARCH 13, 1986
STATEMENT BY ANDRE RUDE
HEWLETT-PACKARD COMPANY

My name is André Rudé, Corporate Personnel Administration Manager, speaking for Hewlett-Packard Company as well as the American Electronics Association. Hewlett-Packard is an electronics firm headquartered in Palo Alto, California at the edge of the Silicon Valley. Our net revenue in FY '85 was \$6.51 billion - \$2.8 billion of that was derived from international sales. We have 375 sales/support offices and distributorships in 76 countries and 54 manufacturing divisions in nine countries; specifically Brazil, France, Germany, Japan, Malaysia, Mexico, Singapore, the United Kingdom, and the United States. We have more than 10,000 products with broad application in the fields of science, engineering, business, industry, health care and education.

The American Electronics Association is a national trade group, also based in Palo Alto, representing some 2,800 electronics and information technology companies. AEA members represent all segments of electronics - from computers and peripherals to semiconductors, from defense to software. Companies of all sizes, the Hewlett-Packard's as well as the newest small startups, are AEA's domain.

Nationwide, the U.S. electronics industry is the largest single manufacturing segment in the U.S., employing 2.5 million Americans. Every one high tech job creates an additional eight service or supplier jobs. Furthermore, it creates the technological tools that are helping keep all U.S. industry competitive and productive.

Mr./Ms. Chairperson and Subcommittee members, the focus of my testimony today will be to recommend examination of current requirements for L-1 blanket certification and retention of the waiver of any return home residency requirement for foreign national students holding degrees in engineering and computer science.

On the subject of the L-1 blanket certification, we would first like to acknowledge the efforts of the drafters of the current legislation who recognized the fact that a more efficient means of INS authorization, in regard to intra-company transfers, was necessary. We urge that the intention of this effort be carried one step further by re-examining the requirements of the certification, mindful of the dynamic nature of multinational corporations. We propose that the blanket petition process be streamlined by creating an L-1 visa

HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON IMMIGRATION
WASHINGTON, D.C. - MARCH 13, 1986
HEWLETT-PACKARD COMPANY
Page 2.

program comparable to that of the J-1 exchange-visitor program monitored by the United States Information Agency. The transfer of management, executive and specialized knowledge talent internationally is of critical importance to multinational companies for ensuring the continuity of their worldwide operations. Blanket certification of companies transferring these type of people will drastically reduce the workload at INS offices and would alleviate the excessive and harmful delays currently being experienced by companies.

Let us turn to the subject of the waiver. Mr./Ms. Chairperson, we commend you for your past efforts to include in immigration reform legislation a waiver of any return home residency requirement for foreign national students holding degrees in engineering and computer science. We urge that you maintain this waiver for such graduates wishing to remain in the U.S. to teach engineering education or to enter into civilian non-defense employment as part of the legislation currently before this Subcommittee.

The long term health and viability of the U.S. electronics industry rests on our ability to assure, for the long term, an adequate supply of the finest quality engineers and computer scientists.

Looking down the road, U.S. electronics companies are especially concerned about that long term capability as we continue to face a national engineering faculty shortage of 8.5%. A major cause of the engineering faculty shortage is that U.S. citizens with B.S. degrees avoid costly Ph.D. programs and teaching careers in favor of industry salaries. Recognizing that this is a problem that requires lead time to solve, Hewlett-Packard has joined with other U.S. high technology companies through the Electronic Education Foundation of the American Electronics Association to initiate an active program to develop, recruit and retain engineering faculty at U.S. colleges and universities. Currently, funding is being provided to 136 U.S. doctoral graduate students who want to teach; we have begun to make progress towards our goal.

In the meantime, as we work in a myriad of concrete ways to bolster our international competitiveness, we urgently request that the Subcommittee retain the current availability of these highly educated professionals for employment, in both industry and academia, through a waiver of any two year return home requirement.

Mr./Ms. Chairperson and members of the Subcommittee, Hewlett-Packard Company and the American Electronics Association would like to express our appreciation for this opportunity to participate in the legislative process and to share with you our concerns on immigration reform as they relate to our business practices.

[Whereupon, at 3:25 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Part II

VOL. 9 - VMAS

22 CFR 41.60

EXHIBIT I

Treaties containing treaty trader provisions in effect between the United States and other countries.

- ARGENTINA. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force December 20, 1934
10 Stat. 1005; TS 4; 5 Bevans 61.
- AUSTRIA. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force May 27, 1911
47 Stat. 1876; TS 838; 5 Bevans 341; 118 LNTS 241.
- BELGIUM. Treaty of friendship, establishment and navigation. (Article II)
Entered into force October 3, 1963 (Treaty of 1875 in force prior to this date)
14 UST 1284; TIAS 5432; 480 UNTS 149.
- BOLIVIA. Treaty of peace, friendship, commerce, and navigation. (Article III)
Entered into force November 9, 1862
12 Stat. 1003; TS 32; 5 Bevans 721.
- BRUNEI. Treaty of peace, friendship, commerce, and navigation. (Article II)
Entered into force July 11, 1853
10 Stat. 909; TS 33; 5 Bevans 1080.
- 1/ CHINA (Taiwan). Treaty of friendship, commerce, and navigation. (Article II)
Entered into force November 30, 1946
63 Stat. 1299; TIAS 1871; 6 Bevans 761; 25 UNTS 69.
- COLOMBIA. Treaty of peace, amity, navigation and commerce. (Article III)
Entered into force June 10, 1848
9 Stat. 881; TS 54; 6 Bevans 868.
- COSTA RICA. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force May 26, 1852
10 Stat. 914; TS 62; 6 Bevans 1013.
- 2/ DENMARK. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force July 30, 1961 (Convention of 1826 was in force prior to this date.)
12 UST 908; TIAS 4797; 421 UNTS 105.
- ESTONIA. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force May 22, 1926
44 Stat. 2379; TS 736; 7 Bevans 620; 50 LNTS 13.
- ETHIOPIA. Treaty of amity and economic relations. (Article VI)
Entered into force October 8, 1953
4 UST 2134; TIAS 2854; 206 UNTS 41.
- FINLAND. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force August 10, 1934
49 Stat. 2659; TS 868; 7 Bevans 718; 152 LNTS 45.
- 2/ FRANCE. Convention of establishment. (Article II)
Entered into force December 21, 1940
11 UST 2398; TIAS 4625; 401 UNTS 75.
- 4/ GERMANY (FRG). Treaty of friendship, commerce, and navigation.
Entered into force July 14, 1956
7 UST 1839; TIAS 3593; 273 UNTS 3.
- GREECE. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force October 13, 1954
5 UST 1829; TIAS 3057; 224 UNTS 279.

NSA R- 1031

FOREIGN AFFAIRS MANUAL

JUN 29 1983

Exhibit I (Cont'd)(page 2)

- HONDURAS. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force July 19, 1928
45 Stat. 2618; TS 764; 8 Bevans 905; 87 LNTS 421.
- IRAN. Treaty of amity, economic relations and consular rights. (Article II)
Entered into force June 16, 1957
8 UST 899; TIAS 3853; 284 UNTS 93.
- IRELAND. Treaty of friendship, commerce and navigation. (Article I)
Entered into force September 14, 1950
1 UST 785; TIAS 2155; 206 UNTS 269.
- ISRAEL. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force April 3, 1954
5 UST 550; TIAS 2948; 219 UNTS 237.
- ITALY. Treaty of friendship, commerce and navigation. (Article I and Article XXIV,
paragraph 7)
Entered into force July 26, 1949
63 Stat. 2255; TIAS 1965; 9 Bevans 261; 79 UNTS 171.
- 5/ JAPAN. Treaty of friendship, commerce, and navigation. (Article I)
Entered into force October 30, 1953
4 UST 2063; TIAS 2863; 206 UNTS 143.
- KOREA. Treaty of friendship, commerce and navigation. (Article II)
Entered into force November 7, 1957
8 UST 2217; TIAS 3947; 302 UNTS 281.
- LATVIA. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force July 25, 1928
45 Stat. 2641; TS 765; 9 Bevans 531; 80 LNTS 35.
- LIBERIA. Treaty of friendship, commerce and navigation. (Article I)
Entered into force November 21, 1939
54 Stat. 1739; TS 956; 9 Bevans 595; 201 LNTS 163.
- LUXEMBOURG. Treaty of friendship, establishment and navigation. (Article II)
Entered into force March 28, 1963
14 UST 251; TIAS 5306; 474 UNTS 3.
- 6/ NETHERLANDS. Treaty of friendship, commerce and navigation. (Article II)
Entered into force December 5, 1957
8 UST 2043; TIAS 3942; 285 UNTS 231.
- NICARAGUA. Treaty of friendship, commerce and navigation. (Article II)
Entered into force May 24, 1958
9 UST 449; TIAS 4024; 367 UNTS 3.
- 7/ NORWAY. Treaty of commerce and navigation. (Article I)
Entered into force January 18, 1828
8 Stat. 346; TS 348; 11 Bevans 876.
Treaty of friendship, commerce, and consular rights, etc.
Entered into force September 13, 1932
47 Stat. 2135; TS 852; 10 Bevans 481; 134 LNTS 81.
- OMAN. Treaty of amity, economic relations and consular rights. (Article II)
Entered into force June 11, 1960
11 UST 1835; TIAS 4530; 380 UNTS 161.
- PAKISTAN. Treaty of friendship and commerce.
Entered into force February 12, 1961
12 UST 110; TIAS 4683; 404 UNTS 259.

- PARAGUAY.** Treaty of friendship, commerce, and navigation. (Article II)
Entered into force March 7, 1840
12 Stat. 1091; TS 272; 10 Bevans 888.
- PHILIPPINES.** On September 4, 1937, pursuant to Article V of the revised Trade Agreement between the United States and the Republic of the Philippines, notes were exchanged between the two Governments implementing the provisions of the Act of June 18, 1934 which renders Philippine nationals eligible for nonimmigrant classification as treaty traders under the provisions of section 101(a)(15)(E)(i) of the Act although there is no commercial treaty in force between the two countries.
Entered into force September 6, 1935
8 UST 3030; TIAS 3349; 238 UNTS 109.
- 8/ SPAIN.** Treaty of friendship and general relations. (Article II)
Entered into force April 14, 1903
33 Stat. 2105; TS 422; 11 Bevans 628.
- 9/ SURINAME.** Treaty of friendship, commerce and navigation. (Article II)
Entered into force December 5, 1957
8 UST 2043; TIAS 3942; 285 UNTS 231.
- SWITZERLAND.** Convention of friendship, commerce, and extradition. (Article I)
Entered into force November 8, 1955
11 Stat. 587; TS 353; 11 Bevans 894.
- THAILAND.** Treaty of amity and economic relations.
Entered into force June 8, 1968
19 UST 5843; TIAS 6540; 652 UNTS 253.
- TOGO.** Treaty of amity and economic relations. (Article I)
Entered into force February 5, 1967
18 UST 1; TIAS 6193; 680 UNTS 159.
- TURKEY.** Treaty of establishment and sojourn. (Article I)
Entered into force February 15, 1933
47 Stat. 2432; TS 859; 11 Bevans 1127; 138 LNTS 345.
- 10/ UNITED KINGDOM.** Convention to regulate commerce. (Article I)
Entered into force July 3, 1815
8 Stat. 228; TS 110; 12 Bevans 49.
- YUGOSLAVIA.** Treaty of commerce. (Article I)
Entered into force November 15, 1882
22 Stat. 963; TS 319; 12 Bevans 1227.

FOOTNOTES

- 1/ CHINA (Taiwan).** Pursuant to Section 6 of the Taiwan Relations Act, P.L. 96-8, 93 Stat. 14, and Executive Order 12143, 44 F.R. 37191, this agreement which was concluded with the Taiwan authorities prior to January 1, 1979 is administered on a non-governmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan. (Added)
- 2/ DENMARK.** The convention of 1826 does not apply to the Faroe Islands or Greenland. The Treaty which entered into force in 1961 does not apply to Greenland.
- 3/ FRANCE.** The Treaty which entered into force in 1960 applies to the departments of Martinique, Guadeloupe, French Guiana and Reunion. (Added)
- 4/ GERMANY (FRG).** The Treaty which entered into force in 1956 now applies to Berlin, as defined in Article XXVI thereof.

Exhibit I (Cont'd)(page 4)

5/ JAPAN. The Treaty which entered into force in 1953 was made applicable to the Bonin Islands on June 26, 1968 and to the Ryukyu Islands on May 15, 1972.

6/ NETHERLANDS. The Treaty which entered into force in 1957 is applicable to the Netherlands Antilles. (Added)

7/ NORWAY. The Treaty which entered into force in 1932 does not apply to Svalbard (Spitzbergen and certain lesser islands).

8/ SPAIN. The Treaty which entered into force in 1903 is applicable to all territories. (Added)

9/ SURINAME. The Treaty with the Netherlands which entered into force December 5, 1957 was made applicable to Suriname on February 10, 1963.

10/ UNITED KINGDOM. The Convention which entered into force in 1815 applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty trader status under this treaty, the alien must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom whose laws accord a separate nationality, such as Canada, do not qualify for treaty trader status under the treaty.

EXHIBIT I

Treaties containing treaty investor provisions in effect between the United States and other countries.

- ARGENTINA. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force December 20, 1854
10 Stat. 1005; TS 4; 5 Bevans 61.
- AUSTRIA. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force May 27, 1931
47 Stat. 1876; TS 838; 5 Bevans 341; 118 LINTS 241.
- BELGIUM. Treaty of friendship, establishment and navigation. (Article II)
Entered into force October 3, 1963 (Treaty of 1875 in force prior to this date)
14 UST 1284; TIAS 5432; 480 UNTS 149.
- 1/ CHINA (Taiwan). Treaty of friendship, commerce, and navigation. (Article II)
Entered into force November 30, 1948
63 Stat. 1299; TIAS 1871; 6 Bevans 761; 25 UNTS 69.
- COLOMBIA. Treaty of peace, amity, navigation and commerce. (Article III)
Entered into force June 10, 1848
9 Stat. 881; TS 54; 6 Bevans 868.
- COSTA RICA. Treaty of friendship, commerce, and navigation. (Article II)
Entered into force May 26, 1852
10 Stat. 916; TS 62; 6 Bevans 1013.
- ETHIOPIA. Treaty of amity and economic relations. (Article VI)
Entered into force October 8, 1953
4 UST 2134; TIAS 2864; 206 UNTS 41.
- 2/ FRANCE. Convention of establishment. (Article II)
Entered into force December 21, 1960
11 UST 2398; TIAS 4625; 401 UNTS 75.
- 3/ GERMANY (FRG). Treaty of friendship, commerce, and navigation.
Entered into force July 14, 1956
7 UST 1839; TIAS 3593; 273 UNTS 3.
- HONDURAS. Treaty of friendship, commerce, and consular rights. (Article I)
Entered into force July 19, 1928
45 Stat. 2618; TS 764; 8 Bevans 905; 87 LINTS 421.
- IRAN. Treaty of amity, economic relations and consular rights.
Entered into force June 18, 1957
8 UST 899; TIAS 3853; 284 UNTS 93.
- ITALY. Treaty of friendship, commerce and navigation. (Article I and Article XXIV, paragraph 7)
Entered into force July 26, 1949
63 Stat. 2255; TIAS 1965; 9 Bevans 261; 79 UNTS 171.
- 4/ JAPAN. Treaty of friendship, commerce, and navigation. (Article I)
Entered into force October 30, 1953
4 UST 2063; TIAS 2863; 206 UNTS 143.
- KOREA. Treaty of friendship, commerce and navigation. (Article II)
Entered into force November 7, 1957
8 UST 2217; TIAS 3947; 302 UNTS 281.

Exhibit I (Cont'd)(page 2)

- LIBERIA.** Treaty of friendship, commerce, and navigation. (Article I)
Entered into force November 21, 1939
54 Stat. 1739; TS 956; 9 Bevans 595; 201 LNTS 163.
- LUXEMBOURG.** Treaty of friendship, establishment and navigation. (Article II)
Entered into force March 28, 1963
14 UST 251; TIAS 5306; 474 UNTS 3.
- 3/ NETHERLANDS.** Treaty of friendship, commerce and navigation. (Article II)
Entered into force December 5, 1957
8 UST 2043; TIAS 3942; 285 UNTS 231.
- NICARAGUA.** Treaty of friendship, commerce and navigation. (Article II)
Entered into force May 24, 1958
9 UST 449; TIAS 4024; 367 UNTS 3.
- 6/ NORWAY.** Treaty of commerce and navigation. (Article I)
Entered into force January 18, 1828
8 Stat. 346; TS 348; 11 Bevans 876.
Treaty of friendship, commerce, and consular rights, etc.
Entered into force September 13, 1932
47 Stat. 2135; TS 852; 10 Bevans 481; 134 LNTS 81.
- OMAN.** Treaty of amity, economic relations and consular rights. (Article II)
Entered into force June 11, 1960
11 UST 1835; TIAS 4530; 380 UNTS 181.
- PAKISTAN.** Treaty of friendship and commerce.
Entered into force February 12, 1961
12 UST 110; TIAS 4683; 404 UNTS 259.
- PARAGUAY.** Treaty of friendship, commerce, and navigation. (Article II)
Entered into force March 7, 1860
12 Stat. 1091; TS 272; 10 Bevans 888.
- PHILIPPINES.** On September 6, 1955, pursuant to Article V of the revised Trade Agreement between the United States and the Republic of the Philippines, notes were exchanged between the two Governments implementing the provisions of the Act of June 18, 1954 which renders Philippine nationals eligible for nonimmigrant classification as treaty investors under the provisions of section 101(a)(13)(B)(ii) of the Act although there is no commercial treaty in force between the two countries.
Entered into force September 6, 1955
6 UST 3030; TIAS 3349; 238 UNTS 109.
- 2/ SPAIN.** Treaty of friendship and general relations. (Article II)
Entered into force April 14, 1900
33 Stat. 2105; TS 422; 11 Bevans 628.
- 8/ SURINAME.** Treaty of friendship, commerce and navigation. (Article II)
Entered into force December 5, 1957
8 UST 2043; TIAS 3942; 285 UNTS 231.
- SWITZERLAND.** Convention of friendship, commerce, and extradition. (Article I)
Entered into force November 8, 1855
11 Stat. 587; TS 353; 11 Bevans 894.
- THAILAND.** Treaty of amity and economic relations.
Entered into force June 8, 1968
19 UST 5843; TIAS 6540; 652 UNTS 253.

Exhibit I (Cont'd)(page 3)

- TOGO. Treaty of amity and economic relations. (Article I)
Entered into force February 5, 1967
18 UST 1; TIAS 6193; 680 UNTS 159.
- 9/ UNITED KINGDOM. Convention to regulate commerce. (Article I)
Entered into force July 3, 1815
8 Stat. 228; TS 110; 12 Bevans 49.
- YUGOSLAVIA. Treaty of commerce. (Article I)
Entered into force November 15, 1882
22 Stat. 963; TS 319; 12 Bevans 1227.

FOOTNOTES

- 1/ CHINA (Taiwan). Pursuant to Section 6 of the Taiwan Relations Act, P.L. 96-8, 93 Stat. 16, and Executive Order 12143, 44 F.R. 37191, this agreement which was concluded with the Taiwan authorities prior to January 1, 1979 is administered on a nongovernmental basis by the American Institute in Taiwan, a nonprofit District of Columbia corporation, and constitutes neither recognition of the Taiwan authorities nor the continuation of any official relationship with Taiwan. (Added)
- 2/ FRANCE. The Treaty which entered into force in 1960 applies to the departments of Martinique, Guadeloupe, French Guiana and Reunion. (Added)
- 3/ GERMANY (FRG). The Treaty which entered into force in 1956 now applies to Berlin, as defined in Article XXVI thereof.
- 4/ JAPAN. The Treaty which entered into force in 1953 was made applicable to the Bonin Islands on June 26, 1968 and to the Ryukyu Islands on May 15, 1972.
- 5/ NETHERLANDS. The Treaty which entered into force in 1957 is applicable to the Netherlands Antilles. (Added)
- 6/ NORWAY. The Treaty which entered into force in 1932 does not apply to Svalbard (Spitsbergen and certain lesser islands).
- 7/ SPAIN. The Treaty which entered into force in 1903 is applicable to all territories. (Added)
- 8/ SURINAME. The Treaty with the Netherlands which entered into force December 5, 1957 was made applicable to Suriname on February 10, 1963.
- 9/ UNITED KINGDOM. The Convention which entered into force in 1815 applies only to British territory in Europe (the British Isles (except the Republic of Ireland), the Channel Islands and Gibraltar) and to "inhabitants" of such territory. This term, as used in the Convention, means "one who resides actually and permanently in a given place, and has his domicile there." Also, in order to qualify for treaty investor status under this treaty, the alien must be a national of the United Kingdom. Individuals having the nationality of members of the Commonwealth other than the United Kingdom whose laws accord a separate nationality, such as Canada, do not qualify for treaty investor status under the treaty.

BILATERAL CONSULAR CONVENTION

Antigua & Barbuda
Australia
Bahamas
Barbados
Belgium
Belize
Bulgaria
Burma
Canada
China
Colombia
Costa Rica
Cuba
Cyprus
Dominica
Fiji
France
Gambia
German Democratic Republic
Ghana
Greece
Grenada
Guyana
Hungary
India
Ireland
Italy
Jamaica
Japan
Kiribati
Korea, Republic
Kuwait
Liberia
Malaysia
Malta
Mauritius
Mexico
Netherlands
New Zealand
Nigeria
Pakistan
Papua New Guinea
Philippines
Poland
Romania
St. Christopher & Nevis
St. Lucia
St. Vincent & the Grenadines

Seychelles
Sierra Leone
Singapore
South Africa
Sri Lanka
Suriname
Sweden
Tanzania
Tonga
Trinidad & Tobago
United Kingdom
Union of Soviet Socialist Republics
Yugoslavia
Zambia
Zimbabwe

TREATY OF COMMERCE AND FRIENDSHIP (CONSULAR RELATIONS INCLUDED)

Argentina
Austria
Bolivia
Denmark
Estonia (USSR)
Ethiopia
Finland
Federal Republic of Germany
Honduras
Iran
Latvia (USSR)
Morocco
Nepal
Norway
Oman
Paraguay
Saudi Arabia
Spain
Switzerland
Thailand

VIENNA CONSULAR CONVENTION

Algeria
Antigua & Barbuda
Argentina
Australia
Austria
Bahamas
Bangladesh
Belgium
Benin
Bhutan
Bolivia
Brazil
Burkina
Cameroon
Canada
Cape Verde
Chile
China
Colombia
Costa Rica
Cuba
Cyprus
Czechoslovakia
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Fiji
Finland
France
Gabon
Germany, Fed. Rep.
Ghana
Greece
Grenada
Guatemala
Guyana
Haiti
Holy See
Honduras
Iceland
India
Indonesia

Iran
Iraq
Ireland
Italy
Jamaica
Japan
Jordan
Kenya
Kiribati
Korea, Dem. People's Rep.
Korea, Rep.
Kuwait
Laos
Lebanon
Lesotho
Liberia
Liechtenstein
Luxembourg
Madagascar
Malawi
Mali
Mauritius
Mexico
Morocco
Mozambique
Nepal
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Romania
Rwanda
St. Christopher & Nevis
St. Lucia
St. Vincent & the Grenadines
Sao Tome & Principe
Senegal
Seychelles
Solomon Is.
Somalia
Spain

Suriname
Sweden
Switzerland
Syrian Arab Rep.
Tanzania
Togo
Tonga
Trinidad & Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United States
Uruguay
Venezuela
Viet-Nam Rep.
Yugoslavia
Zaire

BAKER & MCKENZIE

ATTORNEYS AT LAW

915 CONNECTICUT AVENUE, N.W.

WASHINGTON, D.C. 20006-4078

TELEPHONE (202) 556-8800

TELESCOPIER (202) 556-0800

(202) 556-1800

CABLE AMBASSAD

TELEX 888441

00000

00007

00003

March 12, 1986

AMSTERDAM	MIAMI
BANGKOK	WILSON
BOMBAY	NEW YORK
BRUSSELS	PARIS
BUSINESS AIDES	SJO DE JANEIRO
CARACAS	ROME
CHICAGO	SAN FRANCISCO
FRANKFURT	SAO PAULO
GENEVA	SINGAPORE
HONG KONG	SYDNEY
LONDON	TAIPEI
MADRID	TOKYO
MANTLA	TORONTO
MELBOURNE	VIENNA
MEXICO CITY	

~~Mr. James Connelley~~
 House Subcommittee on Immigration, Refugees
 and International Law
 2131 Rayburn House Office Building
 Staff Room D
 Washington, D.C. 20015

Dear Mr. ~~Connelley~~:

I appreciate your invitation to submit to the House Subcommittee on Immigration, Refugees and International Law our views on current significant issues concerning U.S. work-related visas. I have the following comments:

1. L-1 Temporary Worker Visa (Intra-company transferee): Intra-company relationships

The Immigration and Naturalization Service ("INS") in several important administrative decisions*, has shown a fairly liberal approach to the interpretation of the terms "legal entity" and "affiliate" appearing in Section 101(a)(15)(L) of the Immigration and Nationality Act of 1952, as amended (the "Act"). While these decisions seem to signal the INS's recognition of a variety of possible international business arrangements that could qualify as intra-company affiliations, the treatment of certain relationships remains unclear. For instance, joint venture partners may find it necessary to transfer individuals directly from the foreign partner to the U.S. partner for purposes of the venture, a situation not articulated in the recent

* Matter of Hughes, 18 I&N Dec. 289 (1982); Matter of Tessel, Inc., 17 I&N Dec. 631 (1981); and Matter of Del Mar Ben, Inc., 15 I&N Dec. 5 (1974).

administrative decisions. Secondly, as foreign country laws (e.g. Mexico) often severely restrict the percentage of foreign ownership of domestic corporations, the INS should be encouraged in these circumstances to recognize intra-company affiliation, even where there is a relatively small percentage of actual ownership in the foreign entity, so long as significant other factors (such as control) are present.

A similar situation not recognized by the Act or INS regulations is the inter-company contract and patent or licensing agreement requiring the temporary transfer of key personnel, employed overseas, to the U.S. Theoretically, the B-1 visa could cover this situation, however, the nature of services to be performed in the U.S., the required length of stay, and the payment for services from a U.S. source may place the alien employee outside the parameters of B-1 status. As existing U.S. temporary visas often do not cover such transfers, a new non-immigrant visa category or exceptions to the current B-1 restrictions would be in order to facilitate these kinds of international business arrangements.

In summary, we believe that the laws, regulations and policies governing INS adjudications of petitions involving international business should be geared to promote, rather than hinder, the transfer of key personnel. Such a policy is clearly in the best interests of the U.S.

2. B-1 Visa - Temporary Visitor for Business:
Aliens coming to install, service or repair
commercial equipment or machinery purchased from
a company outside the U.S. or to train U.S.
workers to perform such services (INS Operating
Instruction 214.2(b)(5)) - the "Bricklayers"
case.

A recent Federal District Court decision, concerning the entry into the U.S. of Italian bricklayers for the construction of kilns invalidated INS Operating Instruction 214.2(b)(5). The appellate court has re-instated the Operating Instruction pending its decision. We cannot over-emphasize the importance to U.S. business of access to individuals covered under O.I. 214.2(b)(5), and we believe that any impropriety the courts may find in the use of the B-1 visa in the "Bricklayers" case should not work to negate this INS policy. An alternative to the continued viability of OI 214.2(b)(5) is the creation of a new nonimmigrant visa category as suggested in item 1 above, for the temporary transfer of key personnel for the fulfillment of contract obligations. To

the extent such a provision assists individuals employed overseas and coming to the U.S. to perform services on equipment manufactured by their overseas employers, there is little chance that these individuals would either be remaining in the U.S. permanently or taking jobs otherwise available to U.S. workers.

3. Treaty Trader (E-1) and Treaty Investor (E-2) Status

(a) Transfer of services and technology. Title 22 of the Code of Federal Regulations and relevant notes in the Foreign Affairs Manual give guidelines for issuance of E-1 treaty trader visas. Thus far, the qualifying "trade" has been limited to trade in goods. The Department of State ("DOS") and the INS have to date refused to extend E-1 visa status for trade in services or technology. The volume of potential and actual international trade flowing into the U.S. from the latter two categories is significant, and the E-1 should be expanded to cover this area.

(b) Conformity in adjudication standards. The DOS and INS liaison committee on E-1 and E-2 status has been trying for a number of years to come up with consistent standards for adjudication of treaty trader and treaty investor applications by the INS in the U.S. and by DOS consular officers abroad. Though the criteria for granting E-1 and E-2 status have been clarified in the last few years through additional notes in the Foreign Affairs Manual and through INS policy statements, there is still no continuity between the INS's and DOS's independent adjudications of the same case. For example, a businessman can come to the U.S. in B-1 status to start up or visit an E-1 or E-2 enterprise and find it necessary to apply for a change of status to treaty trader or treaty investor. If the new status is granted by INS, business plans will be made in accordance with the continued presence of the E-1 or E-2 employee or investor. However, when the individual travels outside the U.S., a totally independent adjudication of his E-1 or E-2 eligibility will be made by a consular officer before issuing a visa stamp for re-entry into the U.S. This procedure puts the treaty trader and treaty investor enterprise at considerable risk as to the continued availability of key personnel. A cure for this dilemma might be standardized, upgraded training for INS and DOS officials involved in E-1 and E-2 adjudications, as well as DOS recognition of INS approval of either status.

4. H-1 Temporary Worker Visa: Definition of "Professional"

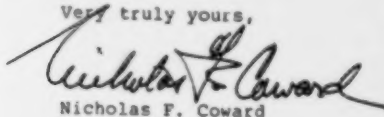
The INS has long defined a "professional" to be an individual holding a degree which is at least equivalent to a U.S. bachelor's level degree in a field considered to be a profession (i.e., engineering, medicine, accounting, certain occupations in business administration, etc.) Though recognizing that significant experience plus relevant education can sometimes equal the equivalent of a U.S. bachelor's degree, the INS has become increasingly restrictive in allowing aliens to qualify for professional status on that basis. For example, a European electrical engineer who graduates from secondary school with a specialization in electrical technology, serves an intensive apprenticeship in his field, and works for a significant time in professional level electrical engineering positions, will often not be considered a professional electrical engineer by INS, despite assertions to the contrary by a U.S. company seeking his services temporarily or permanently. This policy reflects a refusal to accept differences between the U.S. and foreign paths to professional status. It is not unusual in countries that continue to operate on the apprenticeship system for individuals to attain full professional stature through experience following a specialized secondary school education. Some procedure for evaluation and recognition of professionalism in cases of this type should be established by the INS.

5. Access to INS and Processing Time for Applications

While we understand that the INS is burdened with an enormous workload, it is nonetheless frustrating to U.S. employers to face unreasonable delays in receiving adjudications for petitions filed on behalf of potential employees, many of whose services are critically needed. Greater responsiveness and accessibility on the part of INS is sorely needed.

I hope these observations will be of help to you in the upcoming hearings.

Very truly yours,



Nicholas F. Coward



United States Department of State

Washington, D.C. 20520

June 4, 1986

Dear Mr. Chairman:

Following the March 13 hearing on Consular Functions of the Department of State, at which Assistant Secretary Clark testified, additional questions were submitted to be answered for the record.

Please find enclosed the answers to those questions.

Sincerely,

James W. Dyer
Acting Assistant Secretary
Legislative and Intergovernmental Affairs

Enclosure:
As stated

The Honorable
Romano L. Mazzoli, Chairman,
Subcommittee on Immigration, Refugees,
and International Law
Committee on the Judiciary,
House of Representatives.

Question: Explain in detail the changes in structure of promotions before the 1980 Foreign Service Act and after its passage? Describe each level and responsibilities as well as number of years required in each. Also, describe the "up or out" policy.

Answer: The Foreign Service promotion structure has changed in three significant ways as an outcome of the Foreign Service Act of 1980, although the basic "up or out" philosophy predates that Act and has not changed.

"Up or out" means that FSO's of all ranks must compete for promotion with their peers, at risk of involuntary separation from the Foreign Service, if they fail to win promotion within certain time frames set by regulation, known as "time-in-class" rules. Time-in-class, both before and after 1980, is applied in three ways: to limit the amount of time career candidate junior officers have to win tenure, to limit the time mid-level officers have to move from the point of tenure to the point of entry into the senior ranks, and to limit the amount of time an officer may hold senior rank. The guiding philosophy in each case is to ensure excellence at every rank of the Foreign Service by a continuous assessment of officers' abilities and potential, as measured in competition for promotion with their peers.

As for changes brought about by the 1980 Act, first, Foreign Service grades have been renumbered. Prior to 1980,

- 2 -

officers grades ranged from FSO-8 (lowest) to FSO-1 (highest), with the honorary ranks of Career Minister and Career Ambassador at the very top of the system. The Foreign Service Act redesignated these ranks: the old grades from 8 up to 3 were renumbered as 6 through 1. The old FSO-2 became the Counselor rank; the old FSO-1 became the Minister-Counselor rank; Career Minister and Career Ambassador ranks were retained unchanged. The unnumbered ranks are collectively designated as the Senior Foreign Service, and are comparable in status to the Senior Executive Service.

Second, the 1980 Act established a new requirement that officers at the new FSO-1 rank be considered for promotion to the Senior Foreign Service only upon their so volunteering. FSO-1's who request such promotion consideration thereby also accept the risk that their careers will be terminated involuntarily if they do not win promotion to the SFS within a stated period of time, set by regulation (Currently 6 years). Those who do not volunteer are still subject to time-in-class limits (currently 22 years) governing time between tenure and gaining senior rank. Prior to 1980, all officers one grade below the senior ranks were considered for promotion.

BEST COPY AVAILABLE

- 3 -

Third, the Act provided authority to grant Limited Career Extensions to Senior Foreign Service officers who had failed to be promoted to a higher rank within the SFS within the stipulated time-in-class period. Prior to 1980, no such authority existed. LCE's are designed to provide more frequent performance reviews for senior officers without compelling separation of those who fail to win the relatively few opportunities for promotion within the senior ranks.

Question What is the current number of consular officers on duty?

Answer As of January 31, 1986, consular cone officers totalled 1044. Of this total, 552 were serving in consular assignments and 313 were assigned to administrative, economic, political and interfunctional positions. The remainder were in training or detail assignments, or in transit. The chart attached to our response to the following question gives a more detailed assignment profile.

Question How many officers are in the other Foreign Service cones (political officers, economic officers, etc.)? Please update the attached chart.

Answer Attached is an updated chart showing the number of Foreign Service officers in each cone, and their assignment pattern as of January 31, 1986. As of that date there are 895 administrative cone officers, 1218 economic cone officers, and 2069 political officers.

Question Has consular staffing increased or decreased? Please compare with other cones since the Foreign Service Act of 1980.

Answer The best base for comparative information of the kind requested is September 1983. Prior to that

-2-

time the system used for categorizing employee skills involved a complicated series of sub-groupings not translating directly to the current data base. Consular staffing has increased somewhat in terms of total positions during this time. Consular officer intake has also increased by approximately 100 during this period, to provide resources to allow consular officers to take a greater share of interfunctional assignments during their careers. However, because of additional emphasis on analytic reporting capabilities, the number of reporting positions has increased in slightly greater proportion. As of September 30, 1983, consular positions were 20.2% of functional designated Foreign Service officer positions. As of March 31, 1986, consular positions totalled 19.3% of functionally designated positions.

How is the number of consular personnel allocated worldwide and how is the need established for increase or reduction of staff?

Consular personnel are allocated according to the volume and complexity of the consular workload of individual posts. Once each year, every foreign service post is required to submit a detailed statistical and narrative package which measures the consular work of that post. This consular package documents the demand for consular services, the workhours expended by the post to meet this demand, and other basic information concerning the post's consular operations. Via the consular package, posts justify the maintenance of consular staffing levels and seek position increases. CA analyzes posts' justifications and, based on productivity considerations, workload changes and local factors affecting consular operations, may recommend position reprogrammings to posts with priority personnel needs or initiate the request for new positions through the budget process.

Which Embassy/Consulate has the largest contingent of consular officers?

The Embassy at Mexico City has the largest number of consular officers with 35.

Question: In 1975, Larry Eagleburger, former Deputy Undersecretary for Management, advised this Subcommittee that "consular positions, on the average, continue to be classified the lowest of all cone disciplines in the Foreign Service." GAO in a 1980 report on consular Operations also noted "the consular cone is not on a par with that of the other cones." What efforts have been made to improve this "consular cone discrimination?"

Response: The use of the term "discrimination" in describing the classification of consular positions is not appropriate. It connotes a conscious action on the part of the Department to classify positions in that cone at levels lower than sound classification practice would justify. Rather, any existing differences in career opportunities between the four cones is a result of basic differences in the duties and responsibilities associated with those occupations.

Classification decisions for overseas based positions are made through the application of classification criteria which were developed and implemented in the mid 1970's. Those standards were developed with significant input from subject matter experts from the various cones and specialist occupations. Further, in conjunction with the development and passage of the "Foreign Service Act of 1980" Hay Associates performed a pay comparability study which established the current pay linkages. Any disparities in levels among Foreign Service occupations that resulted from those exercises were a consequence of substantive differences in the work performed.

Most recently, we have completed a review of positions in the Senior Foreign Service (SFS). The study was designed to develop classification criteria for identifying positions which belong in the SFS. Once developed, the application of those criteria resulted in a net reduction of 122 position from the SFS ranks. As a percentage of the total number of SFS positions that previously existed in each cone the reductions were: Economic cone - 25.3%, Political cone - 8.2%, Administrative cone - 19.7%, Consular cone - 17.5%, and other- 16.3%. As those percentages indicate, the consular cone did not suffer losses that are out of proportion compared to the other occupational groups.

As a part of our position management program, the Department intends to review during the coming months the classification criteria for mid-level Foreign Service positions. The consular cone will receive the same consideration as the other cones during this exercise. Any changes in the classification structure of consular positions will be based on traditional classification principles.

FULL-TIME PERMANENT CAREER FOREIGN SERVICEASSIGNMENT PROFILEEmployee Skill Groups:

	<u>ADMINISTRATIVE</u>	<u>CONSULAR</u>	<u>ECONOMIC</u>	<u>POLITICAL</u>	<u>TOTAL</u>
Employees Assigned As:					
Administrative	549	27	5	14	595
Consular	68	552	92	143	855
Economic	7	30	557	78	672
Political	16	82	89	782	969
Interfunctional (Regular)	108	174	222	611	1135
Training	24	41	56	84	205
Detail	4	9	43	53	109
Complements	38	30	26	33	127
Specialist	4	-	1	2	7
Intransit and Overcomplement	77	99	127	249	552
TOTAL	895	1044	1218	2069	5226

Data as of 1/31/86

PER/MGT/HRM
2036H

BEST COPY AVAILABLE

Question What is the average grade level (FSO-1 being the highest) for consular officers? What are the averages in the other cones? In a 1980 GAO report on Consular Functions it was stated "many consular officers believe they have less than an even chance to reach the level of Ambassador of Chief of Mission." Isn't it true that the higher one goes on the career ladder, the less consular officers are seen and political officers get the "plum" assignments?

Answer Comparing current FSO-6 to FSO-1 grades, the average grade level for consular and other officers is as follows:

Administrative	-	FO-3 step 7
Consular	-	FO-3 step 1
Economic	-	FO-3 step 4
Political	-	FO-3 step 4

Until fairly recently growth in the consular cone was largely mandated by a need to increase the breadth and level of consular services available overseas, both to handle vast increase in visa work and to provide a full array of services for American

-4-

citizens overseas. By contrast increases in consular cone intake have during the past several years been calculated to also provide the opportunity for more interfunctional assignments for consular officers. It is the chance for such broadening assignments that often prepares officers for policy-level positions in future.

It is our expectation that current intake and assignment patterns, which provides more opportunity for multifunctional experience, will result in increased policy and management positions for highly qualified officers from all cones.

Question How many posts have "principal officers"? What is their rank? How many principal officers are consular-designated? How many political officer designated?

Answer There are 110 posts headed by a principal officers; 17 at the FE-MC grade, 11 at the FE-OC grade, 54 at the FS-01 grade and 28 at the FS-02 grade. Ten posts are consular-designated and one post is political-designated.

Question Are there any consular officers in the position of Ambassador or Consul General?

Answer As of March 31, 1986 two consular officers are serving as Ambassadors.

The title of Consul General is granted to the principal officer of posts graded at FS-01 and above. As of March 31, 1986, 15 consular officers are serving as Consuls General. In addition, 12 consular officers are serving as principal officers at posts where the principal officer position is graded FS-02.

Question: How are promotions of consular officers based? Are they based on the same criteria as other cones?

Answer: Promotions in the Foreign Service are based upon recommendations and rankings of annual selection boards. Officers in the four major functions -- administrative, consular, economic and political affairs -- are all reviewed in the same manner and measured against the same criteria. These criteria are set forth in precepts that guide the selection boards in their decisions. These precepts, which are agreed to by Department of State management and the exclusive employee representative, the American Foreign Service Association, also establish the scope, organization and procedural responsibilities of the boards and the rules of conduct the boards must follow in discharging their duties. In the lower ranks officers are evaluated primarily on their demonstrated ability and potential to perform at higher levels in their primary functional field. As they move to more senior levels, selection boards give increased weight to evidence of capability to carry out executive responsibilities not only in the officer's career field but across functional lines.

According to some reports, many junior officers rotate to other cones--political and economic--because of dissatisfaction of either promotion or burnout. What efforts are being made to retain this cadre of consular officers?

Like all officers of all cones, those officers who elect to enter the Foreign Service as consular cone officers get the broadest possible experience in their first three tours. During these first years, some officers discover that they like or are suited to work in other cones.

These officers have several options. They may compete for jobs with other conal designations, POL, ECON, IROG or ADMIN. They may also request a permanent change of cone. Such requests are evaluated according to a well established procedure (see next item).

While there are some consular cone officers who do request cone changes, the numbers are small. The more usual course is for consular cone officers to bid on positions outside their cone and serve in such positions.

This fact is built into our recruitment numbers. There are fewer consular positions at the mid-levels than there are in the POL/ECON or ADMIN cones. We, therefore, expect a certain number of consular cone officers to use their area and language expertise to serve outside their cone.

- 2 -

Promotion is, in fact, faster in the consular cone than in the other cones, as measured in the average time between mid-level promotion, by cone. Burnout is a problem, and is one of the reasons the assignment system encourages out-of-cone service for consular officers.

1712N

4/29/86

BEST COPY AVAILABLE

Q: Explain how a consular officer can change to another cone.

A: Any tenured foreign service officer, including consular officers, may apply for a change of primary skill code (i.e., cone) if he/she meets the eligibility criteria and the cone being sought is one in which the Director General has determined that there is a projected shortage of employees. Among the eligibility criteria is a requirement that the officer have served a minimum of 2 1/2 of the last 5 years in positions for which designated skill code is the one being sought. Officers seeking cone changes, make their applications to the Skill Code Change Panels in PER/FCA which meet annually in May.

Q. How often is the Foreign Service Exam given? What is the pass rate?

A. The Foreign Service Written Examination is given annually during the first week of December. The registration deadline is the third week of October. The subsequent oral assessment of those candidates who pass the written examination is held from February through December of the following year.

The table below indicates the pass rates on the written examination and the oral assessment during the past five years:

	<u>Written Examination</u>				
	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
Number of Candidates	13,618	16,829	15,074	17,631	15,850
Number of Passers	2,584	2,587	2,790	3,029	3,086
Percentage of Passers	19%	15%	19%	17%	19%

	<u>Oral Assessment</u>				
	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Number of Candidates	2,915	2,577	2,861	3,144	Still
Number of Passers	571	608	850	947	in
Percentage of Passers	20%	24%	30%	30%	Process

Note: The number of candidates taking the oral assessment varies from the number passing the previous written examination, because of holdover candidates from previous years.

PER/REE:4/28/86
Doc. ID #3454A

How are geographic positions assigned to new recruits and how often do current FSO's rotate?

The Bureau of Personnel's Junior Officer Division has the responsibility for determining the first assignments of all entering junior Foreign Service officers. First tours are generally consular positions for all officers, regardless of their cone. This practice allows officers a second tour in-cone and assures that the considerable consular work load is performed in a timely fashion. Consular cone officers can take out-of-cone or rotational assignments on their second tour to assure that they get broader experience.

These first assignments are made based on positions available at the time of entry, the language requirements of the positions, the language qualifications of the entrants, their cones and their experiences before entering the Foreign Service.

1712N

4/29/86

BEST COPY AVAILABLE

Q. How Many foreign service nationals (local employees) are employed worldwide?

A. The Department of State employed 9584 full-time, permanent foreign nationals on February 28, 1986.

Q. What is their training?

A. Their training at the time of their employment is appropriate to the positions for which they are hired, i.e., high school, college, specialized degree, etc. Training after they are hired by the Department of State includes whatever training the employing post finds is necessary and can afford in its budget. Foreign service national employees are eligible for many courses covering unclassified subjects given at the Foreign Service Institute. These courses include correspondence courses and classes held in Washington, on such subjects as consular work, personnel work, budget work, etc. Foreign national employees performing consular work have very good training available at the Foreign Service Institute, both by correspondence and in classrooms in Washington, and occasionally at conferences abroad. Training in the other specialties in which most foreign national employees work is less common, and is mostly taken care of by the post of employment.

Q. What functions do they perform?

A. The vast majority perform administrative and consular work. Others perform economic and political work. They hold jobs with hundreds of titles, such as clerk, typist, secretary, receptionist, translator, personnel specialist, budget analyst, cashier, voucher examiner, accounting technician, telephone operator, security investigator, procurement specialist, storekeeper, supply supervisor, security guard, travel assistant, motor pool supervisor, driver, procurement agent, carpenter, painter, electrician, gardener, water plant operator, power plant operator, boiler operator, visa assistant, passport and citizenship assistant, Federal benefits specialist, physician, nurse, medical technician, economic specialist, computer programmer, legal adviser, scientific affairs assistant, geographic specialist, political assistant, labor assistant, and many others.

Q. Are they supervised by U.S. citizens?

A. Foreign national employees are always supervised by U.S. citizen employees, although there are sometimes intervening layers of supervision by other foreign national employees.

Q. Do they make policy decisions?

A. No. Foreign national employees do not make policy decisions.

BEST COPY AVAILABLE

FULL-TIME PERMANENT CAREER FOREIGN SERVICE

EMPLOYEES AND POSITIONS

Grade	<u>Skill Group</u>		ADMIN		CONSULAR		ECONOMIC		POLITICAL		INTERFUNCTIONAL					TOTAL	
			EMP		POS		EMP		POS		DET	TRAIN	COMP	REG	TOTAL	EMP	POS
											POS	POS	POS	POS	IROG		
FE-CM/CA	2						11		36	2	3			35	38	49	40
FE-MC	34	25			17	14	73	40	174	54	24			198	222	298	355
FE-OC	54	32			31	22	82	27	145	57	13	11		106	130	312	268
FS-01	135	113			126	84	231	138	370	201	25	37		262	324	862	860
FS-02	180	141			234	139	263	224	410	314	18	43	5	224	290	1087	1108
FS-03	221	171			285	218	214	188	379	270	12	79	10	170	271	1099	1118
FS-04	171	122			233	333	230	193	396	279	2	96	28	120	246	1030	1173
FS-05	85	14			96	173	100	28	128	47			46	55	101	409	363
FS-06	13	4			22	2	14		31		2		18	1	21	80	27
TOTAL	895	622			1044	985	1218	838	2069	1224	99	266	107	1171	1643	5226	5312

Data as of 1/31/86

PER/MGT/HKM
2036H

CHIEF OF MISSION, DEPUTY CHIEF OF MISSION AND PRINCIPAL OFFICERINCUMBENTS BY GENERALIST SKILL GROUP

	<u>CHIEF OF MISSION</u>	<u>DEPUTY CHIEF OF MISSION</u>	<u>PRINCIPAL OFFICER</u>
ADMINISTRATIVE	7	3	4
CONSULAR	3	5	25
ECONOMIC	17	36	21
POLITICAL	60	85	50
TOTAL	87	129	100

Data as of 1/31/86

PER/MGT/HRM
2036H

BEST COPY AVAILABLE

FULL-TIME PERMANENT CAREER FOREIGN SERVICEASSIGNMENT PROFILEEmployee Skill Groups:

	<u>ADMINISTRATIVE</u>	<u>CONSULAR</u>	<u>ECONOMIC</u>	<u>POLITICAL</u>	<u>TOTAL</u>
Employees Assigned					
As:					
Administrative	549	27	5	14	595
Consular	68	552	92	143	855
Economic	7	30	557	78	672
Political	16	82	89	782	969
Interfunctional (Regular)	108	174	222	631	1135
Training	24	41	56	84	205
Detail	4	9	43	53	109
Complements	38	30	26	33	127
Specialist	4	-	1	2	7
Intransit and Overcomplement	77	99	127	249	552
TOTAL	895	1044	1218	2069	5226

Data as of 1/31/86

PER/MGT/HRM
2036H

BEST COPY AVAILABLE

MC TO CM

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
EC	661	31	4.7%	4.1	7.4	26.5	24.2
MIN	79	0	0.0%	4.2	0.0	22.8	0.0
INSULAR	28	0	0.0%	4.5	0.0	27.3	0.0
ECONOMIC	147	1	0.7%	5.0	3.8	25.8	23.7
MILITARY	292	4	1.4%	5.3	4.1	25.5	24.8
BOB	2	0	0.0%	2.4	0.0	28.0	0.0
ECIALISTS	88	0	0.0%	5.5	0.0	14.7	0.0
TOTAL	1297	38	2.9%	5.4	7.1	25.2	22.9

OC TO MC

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
EC	103	24	23.3%	4.8	3.9	23.0	21.4
MIN	185	24	13.0%	3.7	3.5	20.1	18.4
INSULAR	81	11	13.6%	3.5	4.1	23.4	24.5
ECONOM	351	34	9.7%	4.2	4.1	23.2	20.8
MILITARY	529	77	14.6%	3.9	3.8	23.4	21.8
BOB	17	2	11.8%	3.0	4.0	22.0	23.2
TOTAL	1266	174	13.7%	4.0	3.8	22.9	21.2

FO 1 TO OC

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
EC	31	13	41.9%	3.7	3.7	22.1	20.9
MIN	429	50	11.7%	5.1	4.9	18.8	17.4
INSULAR	254	24	9.5%	4.8	4.7	21.5	20.1
ECONOMIC	497	54	10.9%	5.1	4.6	20.5	18.9
MILITARY	1120	112	10.0%	5.1	5.4	20.8	20.1
BOB	38	10	26.3%	5.4	6.4	24.2	22.4
TOTAL	2561	267	10.4%	5.1	5.1	20.1	19.5

BEST COPY AVAILABLE

FO 2 TO FO 1

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
MIN	663	95	14.3%	4.0	5.2	15.1	15.6
INSULAR	480	100	20.8%	4.0	5.1	15.4	15.9
ONOMIC	869	128	14.7%	4.7	6.4	14.3	15.3
CRITICAL	1305	188	14.4%	4.8	5.9	15.4	15.9
TOTAL	3517	511	14.5%	4.5	5.7	15.1	15.7

FO 3 TO FO 2

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
MIN	701	132	18.8%	3.6	4.0	10.2	10.4
INSULAR	733	186	25.4%	4.0	4.3	11.9	11.6
ONOMIC	205	132	64.4%	3.3	3.9	8.1	8.7
CRITICAL	933	177	19.0%	4.0	4.6	8.5	9.1
TOTAL	3202	627	19.6%	3.8	4.2	9.8	10.0

FO 4 TO FO 3

historic - 1981 TO 1985 TOTAL

Competition Groups	Number Eligible	Number Promoted	Percent of Eligibles Promoted	Average time-in class of eligibles	Average time-in-class of promotees	Average Length of service Eligibles	Average Length of service Promotees
MIN	410	177	43.2%	3.4	3.7	6.0	6.0
INSULAR	469	222	47.3%	3.3	3.3	5.5	5.6
ONOMIC	349	162	46.4%	2.9	3.1	4.8	4.9
CRITICAL	364	203	55.8%	2.9	3.0	4.7	4.7
TOTAL	1592	764	48.0%	3.1	3.3	5.3	5.3

Department of State
Summary of Employment
As Of
December 31, 1985

Category and Type of Employment

<u>Category</u>	<u>Full Time Perm</u>	<u>Part Time Perm</u>	<u>Full Time Temp</u>	<u>Part Time Temp</u>	<u>Intermit- tent</u>	<u>Employ- ment Total</u>
<u>AMERICANS</u>						
Civil Service	4,527	168	468	98	518	5,779
Foreign Service	9,568	2	272	381	13	10,236
<u>TOTAL AMERICANS</u>	<u>14,095</u>	<u>170</u>	<u>740</u>	<u>479</u>	<u>531</u>	<u>16,015</u>
Foreign Nationals	9,604	-	34	62	5	9,705
<u>TOTAL EMPLOYMENT</u>	<u>23,699</u>	<u>170</u>	<u>774</u>	<u>541</u>	<u>536</u>	<u>25,720</u>

DISTRIBUTION OF EMPLOYMENT BY AREA

DOMESTIC	7,932	169	470	98	524	9,193
OVERSEAS	15,767	1	304	443	12	16,527
<u>TOTAL</u>	<u>23,699</u>	<u>170</u>	<u>774</u>	<u>541</u>	<u>536</u>	<u>25,720</u>

December 31, 1985

Category and Class	Full Time Perm	Part Time Perm	Full Time Temp	Part Time Temp	Inter- mittent	Total Employ- ment
Chiefs of Mission						
FACA	2	-	-	-	-	2
FACH	18	-	-	-	-	18
FANC	55	-	-	-	-	55
FAOC	10	-	-	-	-	10
FAOI	1	-	-	-	-	1
FANC (Non-Career)	-	-	50	-	-	50
TOTAL Chiefs of Mission	86	-	50	-	-	136
Senior Foreign Service						
FECA*	2	-	-	-	-	2
FECH*	23	-	2	-	-	25
FECM*	262	-	9	-	-	271
FECC*	326	-	14	-	-	340
TOTAL SFS	613	-	25	-	-	638
FSO-Corps						
FO-1	813	-	-	-	-	813
FO-2	797	-	-	-	-	797
FO-3	793	-	-	-	-	793
FO-4	218	-	-	-	-	218
TOTAL FSO's	2,621	-	-	-	-	2,621
Career Candidates to FSO's						
FP-1	5	-	-	-	-	5
FP-2	46	-	-	-	-	46
FP-3	97	-	-	-	-	97
FP-4	581	-	-	-	-	581
FP-5	397	-	-	-	-	397
FP-6	94	-	-	-	-	94
TOTAL CANDIDATES	1,220	-	-	-	-	1,220
Foreign Service Specialists						
FP-1	305	-	19	-	2	326
FP-2	534	1	9	-	2	546
FP-3	675	-	6	-	1	682
FP-4	748	-	19	-	-	767
FP-5	763	-	14	-	-	777
FP-6	736	1	-	-	-	737
FP-7	822	-	-	-	-	822
FP-8	395	-	2	-	1	398
FP-9	50	-	-	-	-	50
TOTAL SPECIALIST	5,028	2	69	-	6	5,105
Temp Resident Staff	-	-	93	381	7	481
Consular Agents	-	-	35	-	-	35
TOTAL FOREIGN SERVICE	9,568	2	272	381	13	10,236

*Does not include Chiefs of Mission counted above.

December 31, 1985

Category and Class	Full Time Perm	Part Time Perm	Full Time Temp	Part Time Temp	Inter- mittent	Total Employ- ment
AD-00	-	-	3	-	2	5
AD-07	-	-	-	-	2	2
ES-00	75	-	30	-	-	105
EX-01	-	-	1	-	-	1
EX-02	-	-	4	-	-	4
EX-03	-	-	3	-	-	3
EX-04	-	-	11	-	-	11
SR-00	-	-	2	-	2	4
TOTAL AD,ES,EX,SR	75	-	54	-	6	135
GS-1	-	1	-	10	-	11
GS-2	47	10	40	3	-	100
GS-3	290	23	74	8	2	397
GS-4	303	29	36	6	1	380
GS-5	489	33	2	6	4	534
GS-6	306	10	5	5	10	336
GS-7	559	17	5	3	3	587
GS-8	261	1	-	-	-	262
GS-9	430	14	6	5	8	463
GS-10	74	-	9	-	-	83
GS-11	290	8	18	2	6	324
GS-12	332	4	33	3	9	381
GS-13	250	7	13	1	16	287
GS-14	135	1	21	-	199	356
GS-15	122	5	44	-	22	193
GS-16	23	-	-	-	-	23
GS-17	2	1	-	-	-	3
GS-18	-	-	-	-	-	-
TOTAL GS	3,918	164	306	52	280	4,720
GM-13	64	-	1	-	-	65
GM-14	77	-	2	-	-	79
GM-15	108	-	2	-	-	110
TOTAL GM	249	-	5	-	-	254

BEST COPY AVAILABLE

December 31, 1985

Category and Class	Full Time Perm	Part Time Perm	Full Time Temp	Part Time Temp	Inter- mittent	Total Employ- ment
GG-1	-	-	-	-	-	-
GG-2	-	-	-	-	-	-
GG-3	2	-	-	-	-	2
GG-4	2	-	-	-	-	2
GG-5	3	1	27	9	33	73
GG-6	5	1	-	-	1	7
GG-7	23	-	31	13	22	89
GG-8	8	-	-	-	1	9
GG-9	58	1	9	8	5	81
GG-10	7	1	1	-	-	9
GG-11	43	-	12	-	-	55
GG-12	13	-	7	-	-	20
GG-13	13	-	8	-	-	21
GG-14	8	-	2	-	-	10
GG-15	9	-	2	-	3	14
TOTAL GG	194	4	99	30	65	392
GW-1	-	-	-	1	-	1
GW-2	-	-	-	-	-	-
GW-3	-	-	-	2	-	2
GW-4	-	-	-	-	-	-
TOTAL GW	-	-	-	3	-	3
ED-00	-	-	-	-	1	1
ED-12	-	-	-	-	1	1
ED-13	-	-	1	-	-	1
ED-14	-	-	-	-	13	13
ED-15	-	-	-	-	76	76
EF-13	-	-	1	-	-	1
EF-14	-	-	-	-	2	2
EF-15	-	-	1	-	74	75
TOTAL Experts/Cons	-	-	3	-	167	170

December 31, 1985

Category and Class	Full Time Perm	Part Time Perm	Full Time Temp	Part Time Temp	Inter- mittent	Total Employ- ment
WG-1	-	-	-	-	-	-
WG-2	-	-	-	-	-	-
WG-3	1	-	-	-	-	1
WG-4	2	-	-	-	-	2
WG-5	3	-	-	-	-	3
WG-6	36	-	-	-	-	36
WG-7	1	-	-	-	-	1
WG-8	1	-	-	-	-	1
WG-9	1	-	-	-	-	1
WG-10	1	-	-	-	-	1
WG-11	-	-	-	-	-	-
WG-12	-	-	-	-	-	-
WG-13	-	-	-	-	-	-
WG-14	-	-	-	-	-	-
TOTAL WG	46	-	-	-	-	46
XL-8	1	-	-	-	-	1
TOTAL XL	1	-	-	-	-	1
XP-5	3	-	-	-	-	3
XP-6	9	-	-	-	-	9
XP-7	9	-	-	-	-	9
XP-8	15	-	-	-	-	15
XP-9	4	-	-	-	-	4
TOTAL XP	40	-	-	-	-	40
XS-2	1	-	-	-	-	1
XS-4	-	-	-	-	-	-
XS-6	-	-	-	-	-	-
XS-8	3	-	-	-	-	3
TOTAL XS	4	-	-	-	-	4
YW-00	-	-	1	13	-	14
TOTAL YOC	-	-	1	13	-	14
TOTAL CIVIL SER	4,527	168	468	98	518	5,779
TOTAL FOREIGN SER	9,568	2	272	381	13	10,236
FOREIGN NATIONALS	9,604	-	34	62	5	9,705
GRAND TOTAL	23,699	170	774	541	536	25,720

Overseas and Domestic Employment BreakdownDecember 31, 1985

Category and Class	Domestic U.S.	Foreign Countries	Total
Chiefs of Mission			
FACA	-	2	2
FACH	-	18	18
FAHC	-	55	55
FAOC	-	10	10
FAOI	-	1	1
FANC Non-Career	-	50	50
TOTAL Chiefs of Mission	-	136	136
Non-Chiefs of Mission			
FECA*	2	-	2
FECH*	21	4	25
FEMC*	160	111	271
FECC*	144	196	340
TOTAL FE's	327	311	638
FO-1*	368	445	813
FO-2	348	449	797
FO-3	391	402	793
FO-4	96	122	218
TOTAL FSO's	1,203	1,418	2,621
Career Candidates to FSO			
FP-1	3	2	5
FP-2	6	40	46
FP-3	25	72	97
FP-4	104	477	581
FP-5	84	313	397
FP-6	28	66	94
TOTAL Candidates	250	970	1,220
Specialists			
FP-1	124	202	326
FP-2	235	311	546
FP-3	259	423	682
FP-4	239	528	767
FP-5	230	547	777
FP-6	203	534	737
FP-7	277	545	822
FP-8	60	338	398
FP-9	7	43	50
TOTAL Specialists	1,634	3,471	5,105
Temp Resident Staff	-	481	481
Consular Agents	-	35	35
TOTAL FOREIGN SERVICE	3,414	6,822	10,236

* Does not include FSO Chiefs of Mission counted above

Details Into StateDecember 31, 1985

(These Numbers are not included in any other part of this report)

Pay Plan and Grade	CONTINENTAL U.S.	FOREIGN COUNTRIES	TOTAL
FEMC	4	1	5
FEOC	3	3	6
FI01	-	5	5
FI02	1	-	1
FI03	-	1	1
FO01	2	-	2
FO02	2	1	3
FO03	2	-	2
FP01	-	5	5
FP02	1	12	13
FP03	1	7	8
FP04	-	3	3
FP05	-	8	8
FP06	-	1	1
FQ01	1	1	2
GM15	2	-	2
GS11	3	-	3
GS13	2	-	2
GS14	2	-	2
GS15	3	-	3
TOTAL DETAILS	29	48	77

PER/MGT/OS/SP - Systems and Procedures Branch
647-7914 02/08/86:BNichols:ld
#2210D



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.
Washington, D.C. 20536

APR 21 1986 CO 703,785

Honorable Romano L. Mazzoli
Chairman
Subcommittee on Immigration,
Refugees, and International Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Mazzoli: *Ron*

Thank you for your letter of March 25, 1986, requesting information regarding the B-1, E, H, and L nonimmigrant categories.

In the enclosed attachments, we have responded to your questions regarding the Service's administration of the above classifications and indicated our position on other issues raised. The attachments include a summary of our proposal to amend the L regulations and the expected time frame for issuance; information on the creation of the Administrative Appeals Unit and its organizational and staffing structure; a discussion of the Service's temporariness/dual intent policy; and responses to your questions relating to the B-1, E, H, and L classifications.

We appreciate the opportunity to provide you the Service's position on these matters and hope this information is helpful to you.

Sincerely,

Alan C. Nelson
Alan C. Nelson
Commissioner

Attachments

BEST COPY AVAILABLE

L REGULATION PROPOSAL

Information requested:

- o Update on any proposals to amend regulations on L visas and the expected time frame for issuance.
- o Whether there has been any consideration to removing the annual limitation of five positions to an aggregate number, or developing a certified listing of approved companies with good "track records" for compliance with the terms of visas.

Response:

- o The Service is planning to publish a proposed rule within the next few weeks to amend the L regulations to make certain provisions, especially the blanket L provisions, more useful to businesses and other organizations and to conform Service policy to Congressional intent as it relates to this nonimmigrant category.

The substantive revisions proposed are:

- Petitioner must be and remain an international corporation, firm, or legal entity doing business in the United States and at least one other country.
- To qualify as a manager or executive, virtually all of the intracompany transferee's time must be spent in managerial or executive duties.
- 50-50 joint ventures included under the L category.
- Blanket petitions limited to businesses engaged in substantial commercial activities and which are using L provisions frequently.
- Specialized knowledge included under blanket petition, but limited to professionals as defined under 101(a)(32) of the Act.
- Initial approval of blanket petitions authorized for three years, thereafter indefinitely.
- Procedures streamlined.
- Documentation requirements reduced.
- An alien's period of stay in the U.S. under the L visa could not exceed six years. Initial admission could be for three; an extension could be granted for up to two years; and a second extension of up to one year could be granted under extraordinary circumstances, after certification to the Administrative Appeals Unit.

- The filing of a preference petition after the admission of an L would not prevent the issuance of an extension of stay, assuming the nonimmigrant is otherwise in compliance with the law.
- Petitions for Ls coming to the U.S. to open a new business would be approved for one year after which the petitioner must demonstrate that it is actually established and doing business in the United States.
- o We assume that your statement about the annual limitation of five positions refers to the Blanket L petition procedure wherein a petitioner must have transferred at least five L managerial or executive beneficiaries to the United States during the previous 12 months to qualify to file a blanket petition with the Service. Under current regulations, a blanket petition is valid for three years and may be extended for an additional three-year period. Our proposed regulation revisions will extend the validity of blanket petitions indefinitely after the first three years for those qualifying organizations which have a good "track record" and will expand the criteria which petitioners must meet to file a blanket petition as follows:

A petitioner would be able to file a blanket petition on behalf of itself, its parent, and any number of its branches, subsidiaries, and affiliates as qualifying organizations if:

- The petitioner, its parent, and those branches, subsidiaries, and affiliates are engaged in commercial trade or services;
- The petitioner has an office in the United States that has been doing business for one year or more;
- The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
- The petitioner and the other qualifying organizations have transferred at least 10 "L" managers, executives, or specialized knowledge professionals to the U.S. during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or have a United States workforce of at least 1,000 employees.

ADMINISTRATIVE APPEALS UNIT (AAU)

Information requested:

Information on the creation of the AAU and its organizational and staffing structure.

Response:

The AAU was created October 1, 1983 as a result of a management decision to centralize the appellate authority then exercised by the four INS regional commissioners. The unit, staffed by six examiners and one supervisory examiner, is located in the Central Office and supervised directly by the Associate Commissioner for Examinations.

The AAU currently considers more than 4,000 appeals annually, involving such diverse matters as temporary worker petitions (H & L), third and sixth preference petitions, waivers of excludability, fiance and orphan petitions, citizenship matters, bond breaches and numerous others.

The unit was created because the appellate workload at the regional level was growing and could no longer be handled efficiently and consistently. Since the AAU began handling appeals, backlogs have declined from as much as 18 months to an average of 30 to 60 days. The AAU is also charged with identifying policy issues and preparing decisions for publication as precedents.

TEMPORARINESS/DUAL INTENT POLICY

Information requested:

Discussion of current rulings on H and L visas where long range corporation plans may include seeking permanent residence.

Response:

Over the years, the Service's policy has been that an applicant may be registered for immigration or may file an application for labor certification and still qualify for nonimmigrant classification.

The Administrative Appeals Unit decisions, as well as those in our field offices, have ruled in the past two years that an extension of a temporary H-1 or L visa petition must be denied, except in unusual circumstances, when the alien is the subject of a third or sixth preference petition for employment in the same position, because it is then clear that the employer intends to employ the alien permanently rather than temporarily. If the employer seeks to hire the alien in a different position, however, the petition extension may be approved. In addition, field offices adopted varying rules as to what is "temporary", some choosing three years, some allowing much longer periods before finding that the petitioner's and/or alien's intent were no longer temporary. The effect of these rulings and actions has been correctly perceived as a more restrictive treatment of H-1 and L beneficiaries.

In order to address these problems and return to prior Service policy on these issues, Central Office issued an interim policy instruction to the field on September 23, 1985 to be used as guidance until revisions to regulations are finalized.

We propose to amend the H-1 and L regulations to reflect the following:

- o Regarding "temporariness", we believe adoption of a generous but specific limit would best serve the interests of the Service and the affected public. The beneficiary of the H-1 or L petition would be admitted to the United States initially for a period up to three years. An extension of stay could be authorized for a period not to exceed two years. After five years, an extension of stay not to exceed one year could be granted under extraordinary circumstances after certification to the AAU. No further extensions would be granted. A new petition for the same alien would not be approved unless the alien departed voluntarily and resided outside the United States for one year.
- o The approval of a permanent labor certification or the filing of a preference petition for an alien would not by itself be ground to deny an H-1 or L petition or a request to extend an H-1 or L petition during the five (six)-year period, if the district director, in his or her judgment, determines that certain conditions are met. First, the dates of temporary employment must be within the prescribed time limit. Second, the petitioner must establish that (a) the petitioner is not requesting the temporary

classification for the principal purpose of enabling the employee to enter or remain in the United States permanently in advance of the availability of a visa number and (b), in the case of L classification, the petitioner will transfer the alien to an assignment abroad upon completion of the approved temporary employment, unless the alien has earlier been accorded permanent resident status or other authorization to work.

Similarly, the approval of a labor certification or the filing of a preference petition would also not by itself be ground to deny an alien's application for admission, change of status, or extension of stay if the district director, in his or her judgment, determines that certain conditions are met. The alien must demonstrate, in the case of an H-1, that he/she has not abandoned residence abroad and, in the case of an H-1 or an L, that he/she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization.

QUESTIONS ON BUSINESS-SPECIFIC VISAS

1. B-1 visas: Visitors for businessQuestion:

In view of the Bricklayer decision, does INS have recommendations for a new category of B or H visas for those entering for short term duration in pursuance of a contract?

Answer:

Published decisions of the Board of Immigration Appeals have long held that an alien working abroad for a foreign employer may be admitted as a business visitor if the job requires a temporary stay in the United States as a necessary incident to an international business transaction. The Service's Operations Instruction specifically applied this principal to aliens coming to install, service or repair, under warranty, equipment or machinery purchased abroad.

The Service believes that the B-1 classification is still the most appropriate nonimmigrant classification for this type of activity. While it may be possible, in many instances, for the necessary work to be performed by aliens admitted under the H classification, the procedures are time consuming and the standards inappropriate.

The Operations Instruction was not intended to authorize admission of aliens to perform construction work associated with the installation of machinery. If the Service is successful in settling the Bricklayer case, we intend to issue a regulation which would preclude the admission of aliens as visitors for business for the purpose of performing construction work.

2. E visas: Treaty traders and investors(a) Question:

Because "investors" have been unable to immigrate since 1978 due to the overload of visas in other categories, should the E visa be expanded to allow entry under certain conditions of investors whose countries do not have treaties?

Answer:

Section 101(a)(15)(E) of the Act is included in the law in order to allow the entry into the United States of aliens meeting the criteria set forth in the treaties of commerce and navigation which have existed between the United States and certain foreign nations for many years. In some cases, the treaties predate the 1952 Act by several decades. This visa category was created to comply with the visa requirements; the treaties were not made to comply with the visa category. Additionally, the E-1 and E-2

nonimmigrant categories carry with them certain additional benefits pursuant to the conditions of the treaties (such as certain tax advantages) which would not be appropriate to include investors from non-treaty nations in the E nonimmigrant category. The Service believes that a separate nonimmigrant category would be required to include non-treaty nation investors.

(b) Question:

Should investors be allocated a percentage of third preference?

Answer:

The Service has considered a number of options in the past which would allow immigrant investors to enter the United States without requiring the issuance of a nonpreference visa number. Currently under consideration is an Immigration Improvement Bill which would allow qualifying aliens to enter the United States in a Special Immigrant category reserved for certain business executives (similar to the present L-1 category) and major investors. Safeguards are included in the legislative package which would prevent abuse by marginal investors. This is deemed to be preferable to other suggestions, such as expanding the present third preference classification to include investors.

(c) Question:

The E visa thus far has been limited to commerce and trade—not rendering of services. Should the E visa be changed to incorporate transfer of knowledge? Would this necessitate a change in treaties also?

Answer:

For E classification, trade has been defined by the Department of State and the Service to be an actual exchange of goods or money. The Service is prepared to view certain intellectual properties within the concept of trade. However, intelligence, know-how, and skills residing within an individual person are not within that concept. Patents, copyrights, or other proprietary items may be transferred as if they were goods or merchandise traded. The assignment of an individual to perform services is not trade for our purposes. The Service believes that incorporation of transfer of knowledge or rendering of services under the E visa classification may adversely affect the U.S. labor market. Since the definition of trade is an administrative interpretation, it is not likely that treaties would have to be renegotiated to expand the definition of trade should Congress consider the transfer of knowledge appropriate for the E classification.

3. H-1 visas: Persons of distinguished merit and ability

(a) Question:

Do you think the definition of "aliens of distinguished merit and ability" should be narrowed or do you believe any person within the "professions"

should be able to qualify? (Nurses now qualify as persons of exceptional ability.)

Answer:

Since 1972, the Service has held that aliens who are members of the professions within the meaning of section 101(a)(32) of the Act are classifiable as aliens of distinguished merit and ability if the services they are to perform require professional standing. A narrowing of this interpretation now would undoubtedly result in considerable adverse reaction from businesses, educational institutions, and other organizations who use alien professionals. In addition, we do not believe that there is widespread abuse of the H-1 category by members of the professions.

(b) Question:

Because many H-1's later seek permanent residence, should there be amendatory language requiring the job to be temporary in nature?

Answer:

Prior to the 1970 amendment to section 101(a)(15)(h)(i), aliens of distinguished merit and ability were eligible for H-1 nonimmigrant visas only if the positions they were coming to fill were temporary in nature. The legislative history indicates that this restriction resulted in the exclusion of such aliens whose temporary services were urgently needed in permanent positions in various institutions. To reimpose the requirement that the job be temporary would create even more hardship on businesses and other organizations in our expanding technological society and the increasing international character of business. Since permanent residence status requires a labor market test, any adverse impact on U.S. workers is considered before an H-1 alien can become a permanent resident based on employment.

Such a restriction would significantly reduce the number of H-1 professionals working in the United States. There would also be some reduction in the number of such aliens who seek permanent residence because it is more difficult to obtain employer sponsorship outside the United States. We are not convinced, however, that these results would be beneficial to our economy.

4. L Visas: Intracompany transferees

(a) Question:

Do you see future increases in the use of the L category?

Answer:

The Service has observed that use of the L category increases in proportion to the unavailability of preference visa numbers. We believe that this trend will continue as long as preference numbers are backlogged.

(b) Question:

Are L-users generally bona fide nonimmigrants or do many sell their homes and property before assuming a managerial position in the U.S.?

Answer:

Our experience has been that aliens employed by international companies with established rotation programs are generally bona fide nonimmigrants. There is widespread abuse of the L category by small investors who use the L category as an easy route to permanent residence. We are unable to tell whether many L users sell their homes and property before assuming a managerial position in the United States because the statute does not require that an L nonimmigrant maintain a residence abroad.

(c) Question:

Should the statute be broadened to include persons with high-tech skills?

Answer:

The L classification already includes aliens with specialized knowledge. The inclusion of high-tech skills would erode our ability to apply a labor market test in situations where aliens will be working in the United States. The Service believes that the E, H-1, J, and L classifications, where no labor market test is required, should not be broadened to include additional workers.

Persons with high-tech skills may be admitted to the United States already under the E, H-1, J, and L classifications if they meet other requirements for such visas. We believe that these classifications adequately provide for such workers in situations where a labor market test is not required.

○